effort to cure the constitutional deficiencies pointed out in the Plaintiffs' briefing. App. 119-161.

The second motions for preliminary injunction were litigated in a three-day evidentiary hearing between April 13 and April 15, 1999. Following the evidentiary hearing, but before the district court ruled on the motions, Metro enacted *fifty-two* additional changes to Ch. 6.54. App. 162-175.

The district court thereafter granted the second motions for preliminary injunction, enjoining the Ordinance in its entirety. Pet. App. 109a-161a. The Plaintiffs then filed a motion for leave to file a second motion for interim attorney fees, which was granted. The district court then conducted a status conference to inform the parties of its intent to convert the preliminary injunction into a permanent injunction, which it ultimately did by entering a final judgment to that effect. Pet. App. 107a-108a. Consequently, Chapter 6.54 was permanently enjoined in its entirety.

On January 18, 2000, Metro enacted an additional *seven* amendments to Ch. 6.54 to supposedly address the various rulings of the district court. App. 176-181. Six days after these amendments were enacted, Metro filed a Notice of Appeal in regard to the Order granting a permanent injunction, and the Plaintiffs then filed a Notice of Cross-Appeal. Plaintiffs also filed their second motion for "interim" attorney fees on January 21, 2000, which by that time constituted a request for fees and costs in furtherance of a final judgment.

At oral argument on the initial appeal (regarding the lifting of the first injunction), a panel of the Sixth Circuit concluded from the bench that the various then-pending

appeals should be consolidated, and declined to hear argument at that time.

On May 5, 2000, Metro filed a Motion to Vacate or Dissolve Injunction pursuant to Fed.R.Civ.P. Rule 60(b), predicated upon the seven latest amendments to the Ordinance. The district court denied that motion, finding that it was without jurisdiction to hear the matter in view of the filing of Metro's Notice of Appeal. App. 4. On June 23, 2000, Metro then filed a Notice of Appeal in regard to that ruling (this being the fourth then-pending appeal).

- Metro then filed a motion in the Sixth Circuit Court (as part of the fourth appeal) for a limited remand so as to permit the district court to rule on the Rule 60(b) motion. That motion was denied by an Order entered October 4, 2000, although that appeal was then consolidated with the three other appeals. App. 5-6.

After a hearing on the four appeals, the Sixth Circuit issued an opinion on December 6, 2001, affirming in part and reversing in part, but maintaining the injunction in place. *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville and Davidson County, Tennessee*, 274 F.3d 377 (6th Cir. 2001), ("*Deja Vu I*"). Pet. App. 28a-75a. In addition, the Sixth Circuit did not fault the district court for denying the Rule 60(b) motion, noting Metro's concession at oral argument that the filing of that appeal had been a "procedural misstep." *Id.* at 403. A petition by the Defendant for rehearing and suggestion for rehearing *en banc* was denied by the Sixth Circuit on February 5, 2002. App. 7.

On January 7, 2002, Plaintiffs filed a third motion for attorney fees and costs, predicated primarily upon work expended on the various appeals.

In light of the various rulings by the Sixth Circuit, Metro enacted an additional series of amendments to Ch. 6.54, with the revised codified version of the Ordinance appearing at App. 182-241. In addition, the Tennessee legislature adopted conditional revisions to T.C.A. § 27-9-111(e) – the procedural statute enacted after the first ruling of the district court enjoining Ch. 6.54 – which were to take effect, however, only in the event that this Court denied Metro's petition for a writ of certiorari on that issue. *See, e.g.*, App. 22-23 (discussed in the Historical and Statutory Notes), and Pet. App. 212a.

Indeed, the Defendant filed a petition for a writ of certiorari in this Court, which was denied on May 13, 2002. *Metro. Gov't of Nashville and Davidson County v. Deja Vu of Nashville, Inc.*, 535 U.S. 1073 (2002). This ruling essentially ended the "merits" portion of this litigation, with Plaintiffs being "prevailing parties" pursuant to 42 U.S.C. § 1988 in that Ch. 6.54 was – in its entirety – permanently enjoined from enforcement.

After this Court denied the petition for a writ of certiorari, Plaintiffs filed their fourth motion for attorney fees and costs, which sought reimbursement for work primarily involved in responding to that petition and working on that fee request.

Defendant never objected to the hourly rates charged by the primary attorneys representing the Plaintiffs. In addition, because one of the Plaintiffs' attorneys was on "retainer" with his client, absolutely no claim for reimbursement of his time was sought. App. 274-275, ¶¶ 1-5; App. 298-299, ¶¶ 1-5. Plaintiffs also substantiated, by affidavit, that not all time incurred had been requested for reimbursement; that billing judgment had been exercised;

and that counsels had coordinated with one-another to negate, or at least minimize, duplication of effort. *See, e.g.*, App. 281-283, ¶¶ 8, 11-12; App. 278, ¶ 6; and App. 288-291, pp. 2-5.

On September 30, 2002, Magistrate Judge Juliet Griffin issued her Report and Recommendation granting, in part, the first three motions for attorney fees. Pet. App. 79a-106a. Specifically finding that it was impossible to accurately apportion the time spent on various issues, since the work on the issues upon which Plaintiffs prevailed had to have been intertwined with work on issues upon which the Plaintiffs did not prevail, she reduced the attorney fee claim for work done on the appeal to the Sixth Circuit by two thirds. Pet. App. 104a-105a. In addition, the Magistrate disallowed a significant portion of fees for work that was either performed regarding issues upon which Plaintiffs did not prevail in the district court, or work that was not specifically characterized. Pet. App. 95a-102a. She also denied Plaintiffs' requests for costs, with leave to refile these claims accompanied by a detailed explanation of the necessity and propriety of the expenses. Both Plaintiffs and Defendant filed objections to this Report and Recommendation. App. 300-302 and 303-315. Additionally, Plaintiffs refiled their motion for costs and expenses, seeking reimbursement of $58,565.66 in costs. The Defendant never filed a response to that motion.

On December 5, 2002, District Court Judge Todd J. Campbell issued an Order adopting the Report and Recommendation, but since Magistrate Griffin had not included a final total of the amount owed, Judge Campbell requested that the parties stipulate to that figure. Pet. App. 77a-78a. In furtherance of that Order, the parties submitted a Stipulated Notice stating that $367,080.37

was awarded to Shafer & Associates, P.C.; $10,928.36 was awarded to the law firm of Michael Pleasants; and $53,090.83 was awarded to Sirkin, Pinales, Mezibov & Schwartz. App. 316-318.

Magistrate Griffin later issued a second Report and Recommendation on September 16, 2003, granting Plaintiffs' fourth motion for attorney fees in the amount of $46,870.00. Pet. App. 26a. In addition, noting that the Defendant had failed to file any opposition to the refiled motion for costs, the Magistrate awarded Plaintiffs their expenses in the amount of $58,565.66. Pet. App. 27a. Judge Campbell approved this Report and Recommendation by an Order entered on September 30, 2003. Pet. App. 18a.

On the same day that Order was issued, Defendant filed what can only be described as a perfunctory objection to the second Report and Recommendation. App. 319-321. Defendant raised no objection therein to the attorney fees claimed in the proceedings before this Court. Rather, Metro objected to certain fees claimed for work done on Plaintiffs' second and third fee petitions, and simply claimed – in a conclusory fashion – that *those fees* should be reduced "by at least two-thirds." App. 320. Pursuant to a motion to amend or alter the final order on attorney fees to reflect the fact that Defendant had, indeed, timely objected to the Report and Recommendation, the district court acknowledged the objections but found nothing in them to justify changing its prior order. Pet. App. 76a. Metro appealed.

During the pendency of the attorney fee award appeal, this Court rendered its ruling in *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004).

On February 25, 2005, which was over eight months following the ruling by this Court in *Z.J. Gifts*, but five years and one month after Chapter 6.54 was amended to purportedly correct the constitutional deficiencies affirmed by the Sixth Circuit in *Deja Vu I*, and two years and nine months from the date that the amendments to T.C.A. § 27-9-111(e) went into effect (that being as of this Court's denial of Metro's petition for a writ of certiorari), Metro filed a motion to lift the permanent injunction predicated, in part, upon this Court's ruling in *Z.J. Gifts*. App. 322-325. The district court granted the motion, but declined to rule on *Z.J. Gifts'* applicability to these circumstances because it found the Ordinance and statutory amendments enacted as a direct result of this litigation had cured the constitutional infirmities noted by the Sixth Circuit. App. 15.

Subsequently, the Sixth Circuit conducted oral argument on the fee appeal and affirmed the attorney fees and costs awards. *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville and Davidson County, Tennessee*, 421 F.3d 417, 418 (6th Cir. 2005) ("*Deja Vu II*"). Pet. App. 1a-17a. The majority held that, even assuming the applicability of *Z.J. Gifts*, Plaintiffs did not lose their status as "prevailing parties." It reached this conclusion by observing that rulings of this Court do not apply retroactively to cases that were not then open on "direct review," and that this case was not so open at the time of the ruling in *Z.J. Gifts* because direct review had been completed when this Court denied certiorari. *Id.* at 420-21.

Moreover, the Court of Appeals held that this case did not present any "special circumstances" that would render the award of attorneys' fees unjust under 42 U.S.C. § 1988, and that *Z.J. Gifts* did not invalidate the theory on which Plaintiffs had prevailed. Succinctly put, the Sixth Circuit

concluded that the decision in *Z.J. Gifts* did not "foreclose the result that was reached by the district court in this case under very different circumstances." *Id.* at 422. Accordingly, the Plaintiffs were entitled to their award of attorneys' fees. *Id.* at 424.

Metro then petitioned for rehearing and rehearing en banc, which was ultimately denied. Pet. App. 201a-202a. The Defendant's Petition followed.

REASONS THAT THE PETITION SHOULD BE DENIED

For over seven years, Plaintiffs had the enforcement of Chapter 6.54 enjoined in its entirety, first by way of a preliminary injunction, and then as a result of the entry of a final judgment granting permanent injunctive relief. Because the challenged Ordinance impacted upon First, Fourth, and Fourteenth Amendment rights, and because Plaintiffs sued Metro under, among other things, 42 U.S.C. § 1983, Plaintiffs, as prevailing parties in this litigation, were entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

"In the absence of special circumstances a district court not merely 'may' but *must* award fees to the prevailing plaintiff. . . ." *Indep. Fed'n of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989) (emphasis in original). Succinctly put, if plaintiffs "succeed on *any significant issue* in litigation which achieves *some of the benefit the parties sought in bringing suit*," an award of attorney fees is warranted. *Hensley v. Eckerhert*, 461 U.S. 424, 433 (1983), *citing Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978) (emphasis added). This occurs if the plaintiff can

"point to a resolution of the dispute which *changes the legal relationship between itself and the defendant.*" *Texas State Teachers' Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989) (emphasis added).

The Petitioner asserts that this Court should grant review of the attorney fee award because after this Court denied a petition for a writ of certiorari on the *merits* of Metro's constitutional defenses, this Court issued its decision in *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004), which Metro contends abrogated the validity of the previous judicial review ruling of the Sixth Circuit here. This, the Defendant asserts, constitutes "special circumstances" to deny an award of attorney fees pursuant to 42 U.S.C. § 1988. The Petitioner is in error.

I. THIS IS NOT A CASE WHERE "SPECIAL CIRCUMSTANCES" ARE EVEN APPLICABLE.

Even assuming that the ruling in *Z.J. Gifts* is applicable to the decision of the Sixth Circuit on the merits portion of this case (which is it is not, for the reasons as are set forth in Section III, *infra*), "special circumstances" simply do not exist here because the district court has already found that, by adoption of amendments to Chapter 6.54 and revisions to T.C.A. § 27-9-111(e), the constitutional infirmities discussed by the Sixth Circuit in *Deja Vu I* have been corrected as a direct result of this litigation.

When Metro sought to vacate the permanent injunction in 2005, it argued to the district court that the injunction should be lifted because: (a) it had deleted the definition of "sexually oriented" that the Sixth Circuit found to be unconstitutional; (b) changes to T.C.A. § 27-9-111(e)

had rectified the prompt judicial review problem that the Sixth Circuit had noted; and (c) the decision in *Z.J. Gifts* abrogated the Sixth Circuit's judicial review holding in *Deja Vu I*. App. 323-324. The district court agreed with the first two contentions, but further ruled that it "need not decide whether *Z.J. Gifts* dictates the result in this case, since the amended ordinance guarantees prompt judicial review." App. 15.

Consequently, this is not an action where "special circumstances" are even applicable. Rather, it is a normal circumstance where a lawsuit results in a judgment enjoining the enforcement of an invalid law, and the government then, as a result of the court's ruling, attempts to legislatively "fix" the problem. Certainly, pursuant to all existing precedent, attorney fees are warranted in such circumstances.

Carried out to its logical conclusion, the Petitioner in essence would have this Court remand the attorney fee proceedings to have the district court render some type of hypothetical ruling on whether *Z.J. Gifts* indeed abrogates the Sixth Circuit's judicial review ruling in *Deja Vu I*, when that court has already concluded in its decision vacating the permanent injunction that it need not reach the question of how *Z.J. Gifts* might apply to these circumstances. Accordingly, even if there is a split in the circuits on what may constitute a "special circumstance" so as to warrant denial of an attorney fee award, this is not the case to review such an issue given the lower court's previous ruling.

II. "SPECIAL CIRCUMSTANCES" DO NOT EXIST HERE BECAUSE THERE ARE INDEPENDENT GROUNDS JUSTIFYING THE AWARD OF ATTORNEY FEES.

While Metro's entire "special circumstances" argument rests upon this Court's ruling in *Z.J. Gifts*, the attorney fee award includes compensation for work having nothing to do with matters that might arguably be affected by *Z.J. Gifts*. The fee award, therefore, is independently justified.

First, Metro apparently concedes that Chapter 6.54, as originally enacted, did not provide for appropriate prompt judicial review – even in light of *Z.J. Gifts*. *See* Petition, p. 8 n.2 ("... [T]he Metropolitan Government is seeking review of only the attorney's fees that accrued subsequent to dissolution of the first injunction").

Second, not only did Plaintiffs prevail in the district court on the argument that the definition of "sexually oriented" was unconstitutionally vague and overbroad, but the Sixth Circuit chastised Metro for having even appealed that ruling.

> ... [W]e are a bit confused as to why this definition had to be litigated at all, as Metropolitan Nashville argues strenuously in its brief that it is superfluous. ... For whatever reason, Metropolitan Nashville saw fit to have us decide whether this apparently meaningless term must be removed from its Ordinance. We have and it must.

Deja Vu I, 274 F.3d at 389. Yet, Plaintiffs were compelled to incur attorney fees regarding this issue in the district court and in the appellate court as well.

Third, the Plaintiffs were required to litigate an entire appeal which was clearly, *and admittedly*, unnecessary. In discussing Metro's appeal of the district court's denial of its Fed.R.Civ.P. Rule 60(b) motion, the Sixth Circuit observed that " . . . Metropolitan Nashville concedes that the district court is under no obligation to issue [an order stating that it is disposed to grant a Rule 60(b) motion], and in fact characterized this appeal as a *'procedural misstep'* at oral argument. *We agree.*" *Deja Vu I*, 274 F.3d at 403 (emphasis and clarification added). Nevertheless, Plaintiffs had to incur a significant amount of attorney fees responding to this admitted "procedural misstep."

Fourth, the Magistrate – and by adopting the Report and Recommendation thereof, the district court as well – further noted that Plaintiffs had prevailed on standing and mootness arguments raised by the Defendant, and that it was "not insignificant for the plaintiffs that the Sixth Circuit has spoken definitively on" the issue of the privacy rights as raised by the Plaintiffs with regard to information demanded on license applications. Pet. App. 104a. And, Metro does not contend that the rulings on these matters were in any regard erroneous.

Moreover, in regard to the above matters, it is, of course, relevant that the Magistrate *significantly* reduced the attorney fee claims contained in the first three fee motions. Pet. App. 95a-102a, 104a-105a. The Magistrate did this irrespective of the overlying observation in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), that claims for relief which involve a common core of facts require counsel's time to be devoted generally to the litigation as a whole, and "[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should *not* have his attorney's fees reduced simply because the district

court did not adopt each contention raised." *Id.* at 440 (emphasis added).[2]

But there are further matters which render the "special circumstances" argument here to be misplaced. This Court specifically denied a petition for a writ of certiorari filed by Metro to examine whether the judicial review provisions of *Chapter 6.54* were consistent with the First Amendment. The fees associated with responding to *that* petition were the primary basis for the fourth motion for attorney fees, and the Magistrate even noted that Metro did "not specifically address any fees requested in the plaintiffs' fourth motion. The plaintiffs are clearly prevailing parties in the matters involved in their fourth motion." Pet. App. 24a, n.2. Similarly, Metro never even filed a response to the Plaintiffs' revised motion for costs and expenses. Pet. App. 26a. Consequently, there is no basis to disturb any of those awards, irrespective of the ruling in *Z.J. Gifts.*

In addition, it should not be lost on this Court that the constitutional attack upon Chapter 6.54 has been a virtual moving target given the fact that Metro has engaged in a never-ending array of amendments to the Ordinance as a result of the constitutional claims raised by the Plaintiffs. Prior to the last set of amendments adopted as a result of the Sixth Circuit's ruling in *Deja Vu I*, Metro enacted no less than *two hundred thirty-five* different revisions to Chapter 6.54 after the Plaintiffs filed suit challenging its constitutionality. And this is not a circumstance where

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[2] In fact, the Sixth Circuit seems to have questioned why the Plaintiffs had not filed a cross-appeal seeking full compensation for all of the attorney time expended in the litigation. *Deja Vu II*, 421 F.3d at 423-24.

Metro could contend that Plaintiffs are not entitled to attorney fees in regard to the matters resulting in these changes because of this Court's decision in *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health and Human Res.*, 532 U.S. 598 (2001). Rather, here, Plaintiffs obtained a final judgment and are therefore entitled to reimbursement for all attorney fees reasonably incurred in litigating their claims. *See, e.g., Hensley*, 461 U.S. at 440.

Finally, and probably most importantly, while Petitioner complains only about fees charged *after* the lifting of the first injunction (Petition, p. 8 n.2), *none* of the challenged fees would have been incurred had Metro not incorrectly sought to vacate that injunction pursuant to a still-flawed judicial review process. This is particularly true given that the breadth of the subsequent litigation was set when, pursuant to Metro's request, the district court required the Plaintiffs to raise *all* preliminary injunction claims in their second motions (App. 2), irrespective of the fact that the lower court had previously declined to even rule on the Pendergrass Plaintiffs' civil disabilities argument because of its judicial review ruling. Pet. App. 197a.

For all of these reasons, the attorney fee award as issued by the district court, which significantly *reduced* the claims for reimbursement made by the Plaintiffs, is not the proper case to provide further direction in regard to the "special circumstances" exception, if any is even needed.

III. THIS COURT'S DECISION IN *Z.J. GIFTS* DOES NOT INVALIDATE ANY THEORY ON WHICH THE RESPONDENTS PREVAILED ON THE MERITS OF THIS CASE, AND CANNOT THEREFORE CONSTITUTE A "SPECIAL CIRCUMSTANCE" FOR DENYING FEES.

Irrespective of the other matters upon which the Respondents prevailed below (discussed in Section II, *supra)*, Metro argues that this Court's decision in *Z.J. Gifts* invalidated the "judicial review" ruling of the Sixth Circuit in *Deja Vu I.* Petition, pp. 16-24. The Petitioner is, however, in error.

In *Z.J. Gifts*, this Court resolved the split among the circuits with regard to whether the phrase "prompt judicial review" as set forth in *Freedman v. Maryland*, 380 U.S. 51 (1965), required a prompt judicial determination of a license denial or only prompt access to the courts. *Z.J.Gifts*, 541 U.S. at 781-84. In *Deja Vu I*, the Sixth Circuit reiterated that it was in the "determination" camp. *Deja Vu I*, 274 F.3d at 400 ("the licensing scheme 'must also assure a prompt judicial decision, to minimize the deterrent effect of an interim and possible erroneous denial of a license' "), *quoting Freedman*, 380 U.S. at 59.

The primary decision in *Z.J. Gifts* is in accord with this ruling, where this Court held that its previous reference to "prompt judicial review" required a "prompt judicial *decision*." *Z.J. Gifts*, 541 U.S. at 781 (emphasis added). In fact, this Court went on to note that "we reject the city's argument to the contrary." *Id.*

Consequently, the substantive ruling in *Deja Vu I* in regard to how the phrase "prompt judicial review" is to be operationalized is in *direct accord* with this Court's holding

in *Z.J. Gifts*. More importantly, however, this Court's decision in *Z.J. Gifts* does not address in the least the basis for the Sixth Circuit's judicial review ruling in *Deja Vu I*; that being that Chapter 6.54 failed to satisfy *Freedman* because the *availability* of judicial review was not guaranteed. Rather, Chapter 6.54, and Tennessee law, provided for judicial review only by way of a *discretionary* common law writ of certiorari. *Deja Vu I*, 274 F.3d at 401. Respectfully, this Court in *Z.J. Gifts* never addressed the question of whether a *discretionary* judicial review process would satisfy *Freedman*. Consequently, this portion of the Sixth Circuit's ruling is undisturbed by the ruling in *Z.J. Gifts*.

In fact, the Ninth Circuit recently addressed this distinction when it considered, *post Z.J. Gifts*, an ordinance where licensing decisions could be appealed not only by a special action, but also by a "regular lawsuit seeking an injunction against the enforcement of the ordinance after a contested license denial. . . . " *Dream Palace v. County of Maricopa*, 384 F.3d 990, 1007 (9th Cir. 2004). The Ninth Circuit observed:

> The fact that a denied applicant can seek review other than through a discretionary writ distinguishes this case from *Deja Vu [I]*. . . . In *Deja Vu*, the Sixth Circuit held that a licensing ordinance that *required* an applicant to seek judicial review, if at all, via a *discretionary* writ unconstitutionally failed to guarantee a final judicial adjudication on the merits.

Dream Palace, 384 F.3d at 1007, n.10 (emphasis and clarification added, citation omitted). And it is therefore not insignificant that this Court denied Metro's petition

regarding the discretionary judicial review process at issue here.

Metro also argues that *Z.J. Gifts* is further applicable because Chapter 6.54 contains – it asserts similar to the Colorado ordinance analyzed by this Court – "reasonably objective, nondiscretionary criteria" upon which licensing decisions are to be made. Petition, pp. 21-22, *citing Z.J. Gifts*, 541 U.S. at 783. There are, however, two problems with this argument. First, under the Petitioner's contention, this Court would have to remand to the district court for it to make a determination, *in an attorney fee dispute*, of whether Chapter 6.54 indeed contained "reasonable objective, nondiscretionary criteria"; an issue which the district court was never required to directly address in the "merits" portion of this lawsuit.[3] Second, the record below simply does not bear out Metro's conclusory assertion.

After the first preliminary injunction was lifted, adult businesses in Nashville were required to undergo the licensing process. The record demonstrates that applications were denied for such subjective, discretionary reasons as a business having "unclean couches, restroom walls and fixtures, and shower stalls"; not eliminating "all unnecessary items on the lower level"; not eliminating storage that may attract rodents and insects; not having "tight fitting lids or covers" on all garbage containers; and having floors that were not "thoroughly cleaned throughout the facility and common area."[4] App. 246-258.

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[3] *Cf.*, *Hensley*, 461 U.S. at 437 ("A request for attorneys' fees should not result in a second major litigation").

[4] Of course, it should not be lost on this Court that *none* of these reasons are set forth in Chapter 6.54 as a ground to deny, suspend, or

(Continued on following page)

In addition, that the licensing criteria under Chapter 6.54 is neither objective nor nondiscretionary is directly demonstrated by the simple fact that the licensing board had numerous "split" votes on applications. For example, a motion to approve *Deja Vu's* license failed for the lack of a "second." A motion was then made to *deny* the application, which received two votes "for" and two "against." App. 266-269, 271. Similarly, *Ken's Gold Club* was granted a license on a two-to-one vote (App. 266), when it had previously been *denied* a license, also on a two-to-one vote. App. 262-264.

For all of these reasons, this Court's ruling in *Z.J. Gifts* does not abrogate the judicial review ruling of the Sixth Circuit in *Deja Vu I*. And, in any event, such a determination should not be made in a collateral attorney fee proceeding.[5] Consequently, the decision in *Z.J. Gifts* does not present "special circumstances" warranting the denial of attorney fees here.

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revoke a license. These actual proceedings of the Metropolitan "Sexually Oriented Business Licensing Board," however, aptly demonstrate the total unbridled discretion afforded to that board, which is permitted to deny licenses for any subjective, discretionary, reason whatsoever. At issue here is not, therefore, the "reasonably objective nondiscretionary criteria" that this Court reviewed in *Z.J. Gifts*.

[5] This is particularly true here where Metro attempts – improperly – to relitigate the correctness of the Sixth Circuit's decision in *Deja Vu I* (Petition, pp. 19-20), irrespective of this Court's denial of the Defendant's petition to directly review that ruling. In addition, Metro's arguments in this regard are erroneous because review through T.C.A. § 27-9-111(e) was still discretionary at the time the Sixth Circuit issued its opinion in *Deja Vu I*, notwithstanding the fact that a time limit was provided to resolve the judicial proceeding *if* the court decided to permit the appeal.

IV. THERE IS NO SUBSTANTIAL SPLIT IN THE CIRCUITS WARRANTING REVIEW BY THIS COURT.

A "court's discretion to deny a fee award to a prevailing plaintiff is narrow." *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 68 (1980) (Title VII Fees). In support of its Petition, Metro asserts that there is a split among the circuits with regard to establishing when the narrow "special circumstance" may arise so as to justify denial of a fee award. In addition, the Petitioner argues that a plaintiff in a § 1983 claim should not be considered to be a "prevailing party" when a change in the law occurs after judgment and finality of appellate proceedings on the merits but before the conclusion of attorney fees proceedings.[6] Petition, pp. 13-16.

In regard to the latter contention, Metro correctly cites *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993), for the proposition that a decision of this Court announcing a new rule of federal law is to be "given full retroactive effect in all cases *still open on direct review*. . . ." (emphasis added). Certainly, this case was no longer on "direct review" when, on May 13, 2002, this Court denied Metro's petition for a writ of certiorari with regard to the Sixth Circuit "merits" ruling in *Deja Vu I*. Nevertheless, the Petitioner would have this Court take this case to announce a new rule of law holding that *Harper* should apply "to a case wherein there has already been a final order on the merits but attorney's fees are still

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[6] Petitioner's argument assumes, of course, that *Z.J. Gifts* invalidates the basis of the judicial review ruling of the Sixth Circuit in *Deja Vu I*, which Plaintiffs assert is not the case for the reasons set forth in Section III, *supra*.

at issue." Petition, p. 12. However, there is no split among the circuits on *this particular issue* (indeed, Petitioner has not claimed one to exist), and the only appellate decision which Metro cites for this proposition, *New York State Nat'l Org. for Women v. Terry*, 159 F.3d 86 (2nd Cir. 1998), actually comes to the *opposite* conclusion.

In *Terry*, the district court had entered a "merits" ruling, the Court of Appeals had affirmed it, and this Court had ultimately denied a petition for a writ of certiorari. *Id.* at 96 n.6. These are basically the facts here. In responding to a contention that the plaintiffs in that action were no longer prevailing parties because of this Court's decision in *Bray v. Alexandria Women's Health Clinic*, 498 U.S. 1119 (1991), which was released while the *Terry* attorney fee award was still on appeal, the Second Circuit observed:

> It is true the award of attorney's fees was on direct review when *Bray* was decided, and therefore is subject to the retroactive application of any new rule of law announced therein. . . . *Bray*, however, did not announce a new rule of law with respect to awards of § 1988 attorney's fees. Its new rule related to entitlement to prevail under § 1985(3).

Terry, 159 F.3d at 97.

More specifically, the Second Circuit stated that the intervening decision of *Bray* did not affect the district court's grant of judgment for the plaintiffs there because that holding "had become final before *Bray* was decided. . . . " *Terry*, 159 F.3d at 96. Accordingly, the appellate court concluded that the "merits" judgment in plaintiffs'

favor "was not on direct review" in the later proceedings, *id.*, and noted:

> Because plaintiffs were prevailing parties under § 1985(3), they were entitled to an award of attorney's fees under § 1988. This was not affected by the fact that, after the *judgment* in their favor under § 1985(3) *became final*,[7] new law declared by the Supreme Court would have made them ineligible for a new judgment under § 1985(3).

Id. (emphasis added). Accordingly, not even *Terry* supports adoption by this Court of the "new rule" suggested by the Petitioner.[8]

Moreover, while the Petitioner implies that this Court has not provided direction in regard to when "special circumstances" may be found to justify the denial of an attorney fee award, that is not, however, the case. For

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[7] A judgment "becomes final" when the availability of appeal has been exhausted or has lapsed, and the time to petition for certiorari has passed. *Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 n.14 (1974), *citing Linkletter v. Walker*, 381 U.S. 618, 622 n.5 (1965). In *Terry*, the Second Circuit noted that when "a writ of certiorari is denied, the judgment below stands under the doctrine of res judicata 'even if a new theory of law [is] thought up,'" and that "res judicata consequences are not 'altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case.'" *Terry*, 159 F.3d at 96 n.6, *quoting Brown v. Allen*, 344 U.S. 443, 543 (1953) (Jackson, J., concurring); and *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981).

[8] At best, the Second Circuit in *Terry* noted that the subsequent ruling in *Bray "might"* make the attorney fee award unjust, but found that not to be the case in the particular circumstances there. 159 F.3d at 97. Here, it is far from clear that *Z.J. Gifts* even invalidates the underlying basis of the judicial review decision of the Sixth Circuit in *Deja Vu I*. *See Deja Vu II*, 421 F.3d at 422 (*Z.J. Gifts* did not foreclose the result reached "in this case under very different circumstances").

example, in *Farrar v. Hobby*, 506 U.S. 103 (1992), this Court concluded that although the award of nominal damages made that plaintiff a "prevailing party" eligible to receive attorney fees under 42 U.S.C. § 1988, the circumstances there – a demand of Seventeen Million Dollars yet an award of only One Dollar – did not justify the entitlement to fees. In reviewing virtually the entire body of case law which this Court had issued then-to-date, this Court observed that the *entitlement* to fees was inexorably intertwined with the determination of the *amount* of fees to be awarded, which in turn generally depended upon the degree of success in litigation. *Id.* at 109-116.

In citing to *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782 (1989), for the proposition that a "technical victory may be so insignificant . . . as to be insufficient to support prevailing party status" (*Farrar*, 506 U.S. at 113, *citing Garland*, 489 U.S. at 792), this Court concluded that when a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, the "only reasonable fee is usually no fee at all." *Farrar*, 506 U.S. at 115. *See also id.* at 118 (O'Connor, J., concurring) (noting that the "special circumstances" exception, while often articulated separately from a reasonableness inquiry, sometimes "is bound up with reasonableness: It serves as a shorthand way of saying that, even before calculating a loadstar or wading through all the reasonableness factors, it is clear that the reasonable fee is no fee at all"); *Hewitt v. Helms*, 482 U.S. 755 (1987) (The plaintiff there had obtained "no relief" by way of a revision of prison regulations which were enacted *after* he was released from incarceration, and was therefore not entitled to an award of attorney fees); *Rhodes v. Stewart*, 488 U.S. 1 (1988)

(Plaintiff not entitled to an award of attorney fees under 42 U.S.C. § 1988 when the case was moot before original judgment was issued because one plaintiff/inmate had died and the other had been released from custody, and the judgment therefore afforded the plaintiffs no relief).

What these cases make clear is that the focus is still, and always has been, on the degree of success obtained by the Plaintiff. Here, the entire Ordinance which these Plaintiffs challenged was enjoined, first preliminarily but then permanently, for over seven years. Under all of the existing precedent of this Court, no special circumstances justify the denial of an attorney fee award in these circumstances.

Nor is there any significant split in the circuits as suggested by the Petitioner.

First, with the exception of the fees awarded in this particular case, the Petitioner does not contend that in any of the decisions which it cites for this perceived "circuit split," the appellate courts had come to the wrong conclusion in regard to whether or not special circumstances existed. Second, the mere fact that the First Circuit in *Stefan v. Laurenitis*, 889 F.2d 363, 371 (1st Cir. 1989), the Fourth Circuit in *Doe v. Bd. of Educ. of Baltimore County*, 165 F.3d 260 (4th Cir. 1998), and the Sixth Circuit in *Wikol v. Birmingham Pub. Schls. Bd. of Educ.*, 360 F.3d 604, 611 (6th Cir. 2004), do not adopt, *verbatim*, the Ninth Circuit two-part test does not mean that they are applying standards that are in any significant way different, or that the

decisions in the other circuits would have reached different results if they had utilized the Ninth Circuit standards.[9]

For example, in *finding* "special circumstances" to exist so as to preclude an award of fees for services performed by an attorney-parent who represented his or her child in an Individuals with Disabilities Education Act proceeding, the Fourth Circuit in *Doe* relied (*Doe*, 165 F.3d at 261-65) upon the very similar facts in the ruling of this Court in *Kay v. Ehrler*, 499 U.S. 432, 438 (1991) (holding that a *pro se* plaintiff who is an attorney is not entitled to be awarded attorney's fees under 42 U.S.C. § 1988(b), because the statutory policy of "furthering the successful prosecution of meritorious claims is better served by a rule that creates an incentive to retain counsel *in every such case*"[10]) (emphasis added). Accordingly, the Fourth Circuit, similar to the Ninth Circuit, utilizes reference to the

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[9] The Fourth Circuit correctly observes that the Ninth Circuit test does not provide any "legitimate reason for departing from the usual rule of awarding reasonable fees to prevailing plaintiffs under fee-shifting statutes." *Doe*, 165 F.3d at 264 n.2.

[10] In *Kay*, this Court noted that although § 1988 was in no doubt intended to encourage litigation protecting civil rights, "it is also true that its more specific purpose was to *enable potential plaintiffs to obtain the assistance of competent counsel in vindicating their rights*." 499 U.S. at 436 (emphasis added). *See also S.Rep. No. 94-1011 at 2 (1976) as reprinted in 1976 U.S.C.C.A.N., 5908, 5910.* (". . . If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it cost them to vindicate these rights in court."). These purposes are clearly furthered by the award here.

congressional intent underlying the fee-shifting statutes in order to determine whether special circumstances exist.[11]

Even the approach of the Ninth Circuit, which Petitioner apparently contends is the correct interpretation (*see* Petition, p. 14 – *but see* n.9, *supra*), demonstrates that special circumstances are not present here. In *Seattle Sch. Dist. No. 1 v. Washington*, 633 F.2d 1338 (9th Cir. 1980), the court noted that the "congressional purpose in providing attorney's fees in civil rights cases was to eliminate financial barriers to the vindication of constitutional rights and to stimulate voluntary compliance with the law." *Id.* at 1348, *citing S. Rep. No. 94-1011 (1976) reprinted in 1976 U.S.C.C.A.N. 5908, 5910; H.R. Rep. No. 1558, 94th Cong., 2d Sess., (1976)*. Based upon this, the Ninth Circuit concluded that the district court had erred in depriving a school district of an award of attorney fees merely because it was a public-funded entity. *Seattle Sch. Dist.*, 633 F.2d at 1348. Here, constitutional rights were clearly vindicated, and in light of the over *two hundred thirty-five amendments* to Chapter 6.54 which were enacted during the course of this litigation, the threat of *additional* fees has certainly "stimulate[d] voluntary compliance with the law."

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[11] Petitioner's reliance upon *Raishevich v. Foster*, 247 F.3d 337 (2nd Cir. 2001), to establish a "split" among the circuits is unavailing for the reason that the particular test used by the Second Circuit there dealt specifically with the unique question of whether plaintiffs counsel's entitlement to a contingency fee award on a damage claim would vitiate the underlying purpose of providing an attorney fee award pursuant to 42 U.S.C. § 1988. *Id.* at 344-46. Here, none of the attorneys were retained pursuant to a contingency fee agreement, and there was no damage award entered by the district court.

The phrase "special circumstances" certainly refers to unique situations which, by definition, cannot be universally described in advance by any monolithic rule of law. Further elaboration by this Court is not then necessary.

CONCLUSION

For the reasons as are set forth herein, Plaintiffs/Respondents respectfully request this Honorable Court deny the petition for a writ of certiorari.

Dated: May 19, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION*

DEJA VU OF NASHVILLE, INC., et al.	)	No. 3-97-1066
	)	Consolidated with
v.	)	No. 3-97-1176
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, et al.	)	

ORDER

On October 28, 1998, a hearing was held upon the parties' request, at which time the following matters were addressed:

1. The deadline for the plaintiffs to respond to the defendants' pending motion (Docket Entry No. 34) to dissolve the preliminary injunction is extended to November 2, 1998. Such response shall be transmitted by personal delivery or facsimile to defendants' counsel by 11:00 a.m., C.S.T. (Nashville time).

2. Any reply to such response shall be filed by the defendants, if necessary, by November 4, 1998, and a copy transmitted by facsimile to plaintiffs' counsel.

3. The defendants announced that they agreed to extend the grace periods for the business plaintiffs and the individual plaintiffs to 120 days and 45 days, respectively,

* Any typographical and/or incorrect punctuation found in the following pages were intentionally left to show accurately how the original documents appeared.

from the date of entry of any order granting the defendants' pending motion to dissolve the preliminary injunction for such plaintiffs to make application for a license under the amended ordinance, and that none of the ordinance provisions will be effective against the plaintiffs nor will any action be taken against the plaintiffs for their non-compliance with the ordinance during the grace period as set forth above.

4. After the entry of any order granting the defendants' pending motion to dissolve the preliminary injunction, the plaintiffs shall have 10 working days to file a supplemental motion for preliminary injunction, in which all issues upon which the plaintiffs relies in this case shall be raised.[1] Although the parties and the Court had originally, by prior scheduling orders, contemplated that the plaintiffs' second motion(s) for preliminary injunction would be heard at the same time as the defendants' motion to dissolve the injunction, after further consideration, it appears that it would be more efficient to delay consideration of any second motion for preliminary injunction until after the resolution of the defendants' pending motion to dissolve the preliminary injunction.[2]

5. The deadline for filing all dispositive motions (except motions for injunctive relief) shall be extended, and an extended deadline determined after the resolution of the defendants' motion to dissolve the preliminary injunction, if denied, or after the plaintiffs' anticipated

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[1] In other words, the plaintiffs shall not piecemeal motions for preliminary injunction but shall raise all grounds in support of a motion for preliminary injunction at one time.

[2] Specifically, if the Court were to deny the motion to dissolve, there would be no need for a second motion for preliminary injunction.

second motion for preliminary injunction, if the motion to dissolve is granted.

6. As a result of the agreement reached among the parties, the plaintiffs' motion to continue (Docket Entry No. 57) the hearing scheduled for November 5, 1998, was WITHDRAWN, and the Clerk is directed to terminate that motion.

7. As a result of the scheduling matters addressed above, the defendants WITHDREW their motion to grant the defendants' motion to dissolve based on the plaintiffs' failure to file a response or to clarify the scope (Docket Entry No. 59), and the Clerk is directed to terminate that motion as pending.

8. Plaintiffs' counsel shall call the office of the undersigned within five (5) days of the resolution of the pending motion to dissolve the injunction[3] and, if the motion is granted, within five (5) days of the resolution of the plaintiffs' anticipated second motion for preliminary injunction.

It is so ORDERED.

/s/ Juliet Griffin
JULIET GRIFFIN
United States Magistrate Judge

[3] If the motion is denied, further proceedings will be scheduled, and deadlines established for filing dispositive motions. If the motion is granted, specific deadlines for the plaintiffs to file a supplemental motion for preliminary injunction and for briefing on such motion will be established.

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC., et al.	]
v.	] No. 3-97-1066
	] No. 3-97-1176
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, et al.	] Judge Higgins

ORDER

(Filed May 26, 2000)

The defendants' motion[1] (filed May 5, 2000; Docket Entry No. 224) to vacate or dissolve injunction under Rule 60(b) is denied because the Court is without jurisdiction in view of the filing of a notice of appeal.

It is so ORDERED.

/s/ Thomas A. Higgins
Thomas A. Higgins
United States District Judge
5-23-00

[1] *See also* the defendants' memorandum (Docket Entry No. 225) in support of the motion and plaintiffs' response (Docket Entry No. 226) in opposition to the motion.

No. 00-5881

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEJA VU OF NASHVILLE, INC., a Tennessee corporation; MICHAEL RUCKER, individually; MICHAEL BUTLER, individually; MERONEY ENTERTAINMENT, INC., doing business as Ken's Gold Club, a Tennessee corporation; THE PLEASURE PALACE, INC., a Tennessee corporation; DAWN PIERCE, individually; ELIZABETH MARTZ, individually; JERRY C. PENDERGRASS; THE 822 CORPORATION; 421 CORPORATION,

Plaintiffs-Appellees,

CAROUSEL AMUSEMENT CENTER, INC., a Tennessee corporation,

Plaintiff,

v

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE; EMMITT TURNER, Chief of Police of the Metropolitan Police Department,

Defendants-Appellants

ORDER

(Filed Oct. 4, 2000)

Before: MARTIN, Chief Judge, WELLFORD and SUHRHEINRICH, Circuit Judges.

The defendants appeal the district court's order denying their motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b) They now move this court for a limited remand to the district court for consideration of the Rule 60(b) motion on the merits Alternatively, the defendants move for consolidation of this appeal with three others that are pending before the court. The plaintiffs oppose a remand but concur in the request for consolidation.

The three related appeals, Case Nos. 99-5701 and 00-5284/5288, are nearly ready for submission to the court. Further, there appear to be issues within those appeals that remain for this court's disposition. Under these circumstances, the appeals shall proceed at this time.

The defendants' motion is **DENIED** insofar as it seeks a remand to the district court and **GRANTED** insofar as it seeks consolidation of this appeal with Nos. 99-5071 and 00-5284/5288.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green/sr
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEJA VU OF NASHVILLE, INC., A TENNESSEE CORPORATION, ET AL.,

Plaintiffs-Appellants,

v.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, ET AL.,

Defendants-Appellees.

ORDER

(Filed Feb. 5, 2002)

BEFORE: MARTIN, Chief Judge; WELLFORD and SUHRHEINRICH, Circuit Judges.

The court having received two petitions for rehearing en banc, and the petitions having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petitions or rehearing have been referred to the original panel.

The panel has further reviewed the petitions for rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the cases. Accordingly, the petitions are denied.

ENTERED BY ORDER OF THE COURT

/s/ **Leonard Green**
Leonard Green, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

DEJA VU OF NASHVILLE, et al.	
v.	NO. 3:97-1066
METROPOLITAN GOVERNMENT of NASHVILLE/DAVIDSON COUNTY	JUDGE CAMPBELL CONSOLIDATED CASES

ORDER

(Entered April 27, 2005)

Pending before the Court is a Motion to Dissolve the Injunction (Docket No. 294), filed by the Metropolitan Government of Nashville and Davidson County ("Metro"). Plaintiffs have filed a Response (Docket No. 305) in opposition.

Metro's Motion is GRANTED, and the injunction previously entered in this case (Docket No. 199) is dissolved.

Pursuant to request from Metro, the effective date of this Order shall be August 1, 2005, in order to allow sexually oriented businesses and entertainers sufficient time to comply with the requirements of Chapter 6.54 of the Metropolitan Code of Laws.

All matters having been ruled upon, the case is dismissed and the Clerk is directed to close the file.

IT IS SO ORDERED.

/s/ Todd Campbell
TODD J. CAMPBELL
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

DEJA VU OF NASHVILLE, et al.	)	
v.	)	NO. 3:97-1066
METROPOLITAN GOVERNMENT of NASHVILLE/DAVIDSON COUNTY	)	JUDGE CAMPBELL CONSOLIDATED CASES

MEMORANDUM

(Entered April 27, 2005)

Pending before the Court is a Motion to Dissolve Injunction (Docket No. 294), filed by the Metropolitan Government of Nashville and Davidson County ("Metro"). Plaintiffs have filed a Response (Docket No. 305) in opposition. For the reasons stated herein, the Motion is GRANTED.

Metro seeks to dissolve an injunction issued on December 23, 1999, enjoining enforcement of Chapter 6.54 of the Metropolitan Code of Laws. Docket No. 189. Metro has presented evidence that both the facts and the law have changed since entry of that injunction, justifying its dissolution.

The Order enjoining the ordinance at issue was appealed to the Sixth Circuit Court of Appeals, which, in a published opinion, affirmed it in part and reversed it in part. Relevant to the decision on Metro's Motion to Dissolve Injunction, the Sixth Circuit held: "Upon remand, the district court should maintain the injunction until

Metropolitan Nashville satisfies it that the constitutional problems with the Ordinance's definition of 'sexually oriented' and its judicial review procedures have been corrected." *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County, Tennessee,* 274 F.3d 377, 403 (6th Cir. 2001).[1] The issue before this Court is whether Metro has made a satisfactory showing in that regard. After remand from the Sixth Circuit, this case was reassigned to the undersigned District Judge by Order (Docket No. 251) entered on May 16, 2002.

DEFINITION OF "SEXUALLY ORIENTED"

With regard to the definition of "sexually oriented" found to be unconstitutional, Metro has presented evidence that the ordinance has been amended to eliminate the potential overbreath found to be unconstitutional by the Sixth Circuit. The current ordinance defines "sexually oriented" as follows:

> "Sexually oriented" when used to modify film, movie, motion picture, videocassette, slides, or other photographic reproductions shall mean a film, movie, motion picture, videocassette, slides, or other photographic reproductions that regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities or specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business.

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[1] This dictate from the Sixth Circuit makes Plaintiffs' Rule 60 argument meritless.

Metro Code of Laws, § 6.54.010(Y) (attached to Docket No. 294 as Ex. A).

The Sixth Circuit found the former definition of "sexually oriented" to be overbroad because it could apply to a range of expression that does not cause the secondary effects that the ordinance was aimed to prevent. *Deja Vu*, 274 F.3d at 388. A law is overbroad under the First Amendment if it reaches a substantial number of impermissible applications relative to the law's legitimate sweep. *Id.* at 387.

This Court finds that the amended definition is not overbroad and complies with the First Amendment. It no longer applies to just *any* film, movie, motion picture, etc., but rather only to those which "regularly depict material which is distinguished or characterized by an emphasis on matter depicting or describing 'specified sexual activities or specified anatomical areas' offered for observation by the patron(s) on the premises of a sexually oriented business."

The Court further finds that the amended definition has eliminated the potential for reaching a substantial number of impermissible applications by its restrictions that the subject media be "on the premises of a sexually oriented business," and "regularly depict" material with "an emphasis on" the specified sexual activities or specified anatomical areas defined elsewhere in the ordinance.

For these reasons, Metro has satisfied the Court that the constitutional problems with the ordinance's definition of "sexually oriented" have been corrected.[2]

JUDICIAL REVIEW PROCEDURES

As for the sufficiency of its judicial review procedures, Metro argues both that the judicial review procedures have been changed and that the law as to what is required has changed.

The Sixth Circuit found that the judicial review procedures in effect at the time of the injunction provided no assurance of prompt judicial review because there was no affirmative evidence showing that every writ of certiorari would be granted. *Deja Vu,* 274 F.3d at 402. The court held that because the ordinance's judicial review procedures did not guarantee prompt judicial review as required by the First Amendment, those procedures were facially[3] unconstitutional. *Id.* at 402-403.

The judicial review procedures provided by Tennessee law have since changed. The relevant statute now provides:

> If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution of the United States, and either the petitioner or the

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[2] The Sixth Circuit also noted that the phrase "sexually oriented" is "never used but in conjunction with some other word that has its own definition" and is "apparently meaningless." *Deja Vu*, 274 F.3d at 389. Thus, "sexually oriented" can "easily be severed" in any event. *Id.*

[3] Plaintiffs' assertion that the constitutionality of the ordinance herein was decided on a case-by-case basis is wrong.

> respondent requests an expedited hearing, the court *shall immediately grant* the writ of certiorari, and *shall hear the matter and issue its decision* within forty (40) days of the court granting the writ of certiorari.

Tenn. Code Ann. § 27-9-111(e) (emphasis added).

The Court finds that this amended, mandatory[4] language does guarantee prompt judicial review as required by the First Amendment. The statute is sufficient "affirmative evidence" that every writ of certiorari concerning protected speech will be granted. Accordingly, Metro has satisfied this Court that the constitutional problems with its judicial review procedures have been corrected.[5]

Even if the amended ordinance did not specifically guarantee prompt judicial review, which it does, Metro argues that it is sufficient to withstand constitutional muster under the recent case of *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.*, 124 S.Ct. 2219 (2004). In that case, the Supreme Court held that Colorado's ordinary judicial review procedures suffice to protect First Amendment judicial review rights, so long as the courts remain sensitive to the need to prevent First Amendment harms and administer those procedures accordingly. *Id.* at 2224. Specifically, the Court stated "we have no reason to doubt the willingness of Colorado's judges to exercise these powers wisely so as to avoid serious threats of delay-induced First

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[4] Plaintiffs' contention that the statute is discretionary has no merit.

[5] It is also clear that the statute was amended specifically to comply with the Sixth Circuit's opinion in this case, as reflected in 2002 Pub. Acts, c. 615, § 2 regarding the effective date.

Amendment harm. We presume that courts are aware of the constitutional need to avoid 'undue delay result[ing] in the unconstitutional suppression of protected speech.'" *Id.* at 2225.[6]

In addition, the Supreme Court held that where the regulation simply conditions the operation of an adult business on compliance with neutral and nondiscretionary criteria[7] and does not seek to censor content, an adult business is not entitled to an unusually speedy judicial decision in the first place. *Id.* at 2226. The Court need not decide whether *Z.J. Gifts* dictates the result in this case, since the amended ordinance guarantees prompt judicial review.

For these reasons, the Court is satisfied that the previously-determined unconstitutional deficiencies in Metro's judicial review procedures in this case have been corrected, and that the amended statute provides the required First Amendment protections. Metro's Motion to Dissolve the Injunction is GRANTED.

FURTHER LITIGATION

Plaintiffs argue that dissolution of the injunction should not end this litigation because the injunction hearing was never consolidated with a trial on the merits.

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[6] "Colorado's rules provide for a flexible system of review in which judges can reach a decision promptly in the ordinary case, while using their judicial power to prevent significant harm to First Amendment interests where circumstances require." *Z.J. Gifts* at 2226. Metro argues the same presumption should be afforded Tennessee's rules and courts.

[7] The Court does not use the words "objective" or "subjective" as suggested by the Plaintiffs.

Judge Higgins' Order of December 23, 1999, provides otherwise. That Order states:

> In this action, as stated on the record at the hearing on December 21, 1999, it appears that no further or additional relief is sought beyond that which has been granted by the preliminary injunction.
>
> The preliminary injunction heretofore issued is herewith made a permanent injunction.
>
> . . .
>
> The entry of this order shall constitute the final judgment in this action.

Docket No.199.

In addition, as Metro points out, Magistrate Griffin specifically ordered the Plaintiffs to file (within ten days of any order granting Defendants' prior Motion to Dissolve Preliminary Injunction) a supplemental motion for preliminary injunction, "in which all issues upon which the plaintiffs relies (sic) in this case shall be raised. In other words, the plaintiffs shall not piecemeal motions for preliminary injunction but shall raise all grounds in support of a motion for preliminary injunction at one time." Docket No. 61. That "supplemental" motion (Docket No. 83) was granted by Judge Higgins (Docket No. 188), appealed to the Sixth Circuit (Docket No. 208), affirmed in part and reversed in part (274 F.3d. 377), and is the subject of the pending Motion to Dissolve Injunction. All issues upon which the Plaintiffs rely in this case should

have been raised.[8] Indeed, the Sixth Circuit found that Plaintiffs raised "all of their constitutional challenges to the Ordinance." *Deja Vu*, 274 F.3d at 386.[9]

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[8] The Court cannot and will not revisit other substantive rulings previously made herein.

[9] Plaintiffs also argue there is a pending Motion for Review of the Magistrate Judge's Order. The only pending motion in this case is this Motion to Dissolve the Injunction. All other motions were termed when the judgment was made final (Docket No. 199) and appealed.

To the extent Plaintiffs seek to raise new matters arising after the Sixth Circuit's opinion, or related to new ordinance provisions, they should file a new case.

Plaintiffs also argue that various state constitutional issues are pending. The Court disagrees for the reasons stated above, but in any event declines supplemental jurisdiction over any state law claims. 28 U.S.C. § 1367(c).

42 U.S.C. § 1988. Proceedings in vindication of civil rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than

the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

T.C.A. § 27-8-101. Constitutional basis. – The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy. [Code 1858, § 3123 (deriv. Const. 1834, art. 6, § 10); Shan., § 4853; Code 1932, § 8989; T.C.A. (orig. ed.), § 27-801.]

T.C.A. § 27-9-111 (2002). Hearings; findings

(a) At the expiration of ninety (90) days from the filing of the transcript, the cause shall stand for trial, and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county or municipal revenue.

(b) The hearing shall be on the proof introduced before the board or commission contained in the transcript, and upon such other evidence as either party may desire to introduce.

(c) The judge shall reduce all findings of fact and conclusions of law to writing and make them parts of the record.

(d) In making such findings of fact, the judge shall weigh the evidence and determine the facts by the preponderance of the proof.

(e) If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution of the United States, and either the petitioner or the respondent requests an expedited hearing, the court shall immediately grant the writ of certiorari, and shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari. When an expedited hearing is requested, the board or commission shall forward the transcript described in § 27-9-109 within seven (7) days of the grant of the writ of certiorari.

1951 Pub.Acts, c. 261, § 1; 1987 Pub.Acts, c. 28, §§ 1 to 3; 1998 Pub.Acts, c. 794, § 1, eff. April 23, 1998. Amended by 2002 Pub.Acts, c. 615, § 1.

Formerly 1932 Code, § 9014; § 27-911.

HISTORICAL AND STATUTORY NOTES

2002 Pub.Acts, c. 615, § 1, deleted the first sentence of subsec. (e), which formerly read: "If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution if the United States, and either the petitioner or the respondent requests an expedited hearing, the court shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari" and replaced it with the language "If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution of the United States, and either the petitioner or the respondent requests an expedited hearing, the court shall immediately grant the writ of certiorari, and shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari."

2002 Pub.Acts, c. 615, § 2, provides:

"This act shall not take effect until such time as the United States Supreme Court has denied the petition for a writ of certiorari filed by the Metropolitan Government of Nashville and Davidson County in the case of Deja vu, Inc. v Metropolitan Government, 274 F.3d 377 (6th Cir. 2001), or if the United States Supreme Court grants a writ of certiorari, this act shall not take effect until such time as the United States Supreme Court affirms the Sixth Circuit's opinion on the issue of 'prompt judicial review.' If the United States Supreme Court reverses the Sixth Circuit's opinion on 'prompt judicial review' this act shall never take effect."

BILL NO. O97-796

AN ORDINANCE AMENDING TITLE 6 OF THE METROPOLITAN CODE OF LAWS BY ADDING A NEW CHAPTER 6.54, LICENSING AND REGULATION OF ADULT ENTERTAINMENT AND ADULT BUSINESSES.

WHEREAS, the Metropolitan County Council of the Metropolitan Government of Nashville and Davidson County ("Metropolitan Council") may, pursuant to Section 2.01(40) of its Charter and the general laws of the State of Tennessee, enact regulatory ordinances protecting and promoting the general welfare, health, and safety of its citizens; and,

WHEREAS, the Metropolitan Council has previously enacted Sections 17.12.080(29), 17.60.020(C)(1), and 17.64.270 of the MCL which regulate the location of sexually oriented businesses; and,

WHEREAS, since the adoption of the above-referenced ordinances, the Metropolitan Council has received and considered reports and recommendations from employees, citizens, other local governments, and other reputable sources and has determined that locational criteria alone do not adequately protect the health and general welfare of the people of Metropolitan Nashville Davidson County, and,

WHEREAS, the Metropolitan Council has determined that permitting and/or licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places for illegal sexual activity or solicitation; and,

WHEREAS, it is not the Intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult entertainment establishments; and,

WHEREAS, it is not the intent of the Metropolitan Council to condone or legitimize the distribution of obscene materials, and the Metropolitan Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state and federal enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in Metropolitan Davidson County; and,

WHEREAS, the locational requirements of the Adult Entertainment Zoning Ordinance are unaffected by the following amendment.

WHEREAS, the Metropolitan Council desires to amend the Code of Laws of the Metropolitan Government of Nashville and Davidson County ("MCL") to regulate adult entertainment establishments in order to promote and secure the general welfare, health, and safety of the citizens of Metropolitan Nashville and Davidson County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY.

SECTION 1. Purpose and Findings.

(A.) *PURPOSE.* It is the purpose of this ordinance to regulate adult entertainment establishments to promote the health, safety, morals, and general welfare of the citizens of Metropolitan Nashville Davidson County. The provisions of this ordinance have neither the purpose nor

effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials or entertainment. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented materials or entertainment to their intended market.

(B.) *FINDINGS*. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and reports made available to the Metropolitan Council, and on findings incorporated in the *DLS d/b/a Diamonds and Lace Showbar v. The City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *DLS, Inc d/b/a Diamonds and Lace Showbar v. City of Chattanooga*, 914 F.Supp. 193 (E.D. Tenn. 1995); *DLS, Inc d/b/a Diamonds and Lace Showbar v City of Chattanooga*, 894 F.Supp. 1140 (E.D. Tenn. 1995); *City of Renton v. Playtime Theaters. Inc.*, 475 U.S. 41 (1986); *Coleman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976); and studies and judicial opinions concerning the adverse secondary effects of adult uses on communities such as Austin, Amarillo, and Beaumont, Texas; Phoenix and Tucson, Arizona; Minnesota [see Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989)], Seattle, Washington; [*see Northend Cinema, Inc. v. Seattle*, 90 Wash.2d 709, 585 P.2d 1153 (1978)]; and Houston, Texas; [see *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); as well as newspaper articles [*see Peep Shows Role Unregulated* (*Tennessean*, April 8, 1991)] reports from the Police Department and reports from the Department of Health of

the Metropolitan Government of Nashville and Davidson County, the Metropolitan Council finds:

1. Unlawful and unhealthy activities that are occurring within adult entertainment establishments are presently uncontrolled by the operators of these establishments and, there is presently no mechanism to control the unhealthy and unlawful activities that are occurring within these establishments or to make the owners and operators of these establishments responsible for the activities that occur on their premises.

2. Certain employees of adult entertainment establishments in Davidson County engage in a higher incidence of certain types sexually oriented criminal activity, unhealthy and illegal sexual contact, and other unlawful activities at these businesses than employees of other establishments

3 Sexual acts, including homosexual and heterosexual masturbatory acts and oral and anal sex acts, are a regular occurrence at adult entertainment establishments in Davidson County, especially those establishments where there are private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

4. Offering and providing such space, areas and rooms where such activities take place creates conditions that generate prostitution and other crimes, as well as unhealthy conditions.

5. Persons frequent certain adult theaters, adult bookstores, and adult video stores for the purpose of providing sex within the premises of such adult theaters, adult bookstores, and adult video stores and patrons frequent certain adult theaters, adult bookstores, adult

nightclubs, and adult video stores for the purpose of procuring prostitutes.

6. At least fifty communicable diseases may be spread by activities currently occurring in adult entertainment establishments, including, but not limited to, syphilis, gonorrhea, human immuno-deficiency virus infection (HIV), genital herpes, hepatitis B, hepatitis Non A, hepatitis Non B, amebiasis, and shigella infections.

7. Since 1981 and to the present, there have been an increasing cumulative number of reported cases of acquired immuno-deficiency syndrome (AIDS) caused by the human immuno-deficiency virus (HIV) in the United States –

600 cases in 1982	8,555 in 1985	68,959 in 1994
2,200 in 1983	336,522 between	61,614 in 1995
4,600 in 1984	1986 and 1992	and 36,693 cases
	77,641 in 1993	in 1996;

and in Tennessee –

3 cases in 1982	345 in 1987	2,380 in 1992
7 in 1983	666 in 1988	1,308 in 1993
28 in 1984	1,012 in 1989	818 in 1994
70 in 1985	1,389 in 1990	1,018 in 1995
161 in 1986	1,820 in 1991	and 965 cases in 1996;

and in Davidson County –

187 cases in 1992	207 in 1995
308 in 1993	153 in 1996.
177 in 1994	

8. As of February 28, 1993, there have been 2,521 reported cases of AIDS in Tennessee, with 1,502 deaths being reported. Of those 2,521 cases, 2,340 were males and 181 were females.

9. The number of cases of early syphilis in the United States has risen with

33,613 cases reported in 1982	27,883 in 1986
32,698 in 1983	35,147 in 1987
28,607 in 1984	40,117 in 1988
27,131 in 1985	44,540 in 1989
	45,200 in 1990

10. The number of cases of early syphilis in Tennessee has grown with

1,150 in 1982	2,766 in 1989
1,013 in 1983	1,989 in 1990
1,014 in 1984	2,011 in 1991
1,168 in 1985	2,786 in 1992
1,160 in 1986	2572 in 1993
1,330 in 1987	2312 in 1994
1,910 in 1988	2,035 in 1995
	and 1,807 in 1996

and in Davidson County syphilis cases reported annually have risen with 101 cases in 1982 –

104 in 1983	130 in 1988	149 in 1993
86 in 1984	211 in 1989	100 in 1994
52 in 1985	515 in 1990	194 in 1995
87 in 1986	437 in 1991	292 in 1996
173 in 1987	388 in 1992	

11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with 960,633 civilian cases reported in 1982 –

900,435 in 1983	780,905 in 1987
878,556 in 1984	719,536 in 1988
911,419 in 1985	733,151 in 1989
900,868 in 1986	and 611,932 through November 1990;

and in Tennessee –

32,444 in 1982	23,740 in 1987	15,197 in 1994
30,896 in 1983	19,336 in 1988	13,894 in 1995
30,749 in 1984	19,557 in 1989	11,710 in 1996
32,110 in 1985	56,763 through	
26,455 in 1986	December 1992	
	14,285 in 1993	

12. The number of cases of gonorrhea reported annually in Davidson County remains at a high level, with –

5,325 in 1982	3,846 in 1987	2,390 in 1992
4,744 in 1983	3,815 in 1988	2,388 in 1993
5,294 in 1984	3,409 in 1989	3110 in 1994
5,202 in 1985	2,966 in 1990	2,622 in 1995
4,731 in 1986	2,701 in 1991	2,033 in 1996.

13. The Surgeon-General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

14. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

15. According to the best scientific evidence, numerous other diseases and infestations, including chlamydia, pelvic inflammatory disease, chancroid, herpes, hepatitis B, lympho-granuloma venereum, granuloma inguinale, genital warts, trichomomasis, scabies, pediculosis, amebiasis, giardiasis, and others are transmitted by sexual acts.

16. Conditions in some adult entertainment establishments are unsanitary and unhealthy, in part, because

the activities conducted there are unhealthy, and in part, because the owners and operators of the facilities fail to regulate the unhealthy and unsanitary activities and fail to maintain the facilities in a sanitary and healthy condition.

17. The United States Center for Disease Control has issued universal precautions, including housekeeping and disinfection guidelines, for the prevention of transmission of the HIV virus and other diseases. These guidelines should be followed anytime there is the potential for exposure to blood and other body fluids.

18. Staff members of the police and health departments have observed semen, blood, fecal matter and urine within the public areas of adult entertainment establishments in Davidson County. These unhealthy conditions are worse in areas within adult entertainment establishments where persons view sexually oriented films, sexually oriented movies, adult videos or witness sexually oriented live entertainment.

19 Permitting entertainers to be in close contact with patrons initiates the exchange of money which may reasonably be expected to serve as an opportunity to solicit for and an inducement to agree to unprotected and/or illegal sexual activity, including prostitution and thus poses a threat to both groups by promoting the spread of communicable diseases, and encouraging crime.

20. When the previously described activities characteristic of adult entertainment establishments are present within Davidson County, Tennessee, other activities which are illegal or unhealthy tend to accompany them, concentrate around them and be aggravated by them. Such other activities include, but are not limited to, prostitution,

pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and possession, distribution and transportation of obscene materials.

21. The findings noted in paragraphs 1 through 20 raise substantial governmental concerns.

22. Adult entertainment establishments should be reasonably regulated in order to protect those substantial governmental concerns.

23. A reasonable licensure procedure is an appropriate and effective mechanism to place the burden of that reasonable regulation on the owners and operators of adult entertainment establishments. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operator to see that the adult entertainment establishment is run in a manner that is consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of Davidson County, Tennessee. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult entertainment establishments, fully in possession and control of the premises and the activities occurring therein.

24. Removal of doors on booths – wherein patrons view sexually oriented movies, sexually oriented films, adult videos, or sexually oriented live entertainment – and requiring sufficient lighting in premises with booths advances the substantial governmental interest of curbing the illegal and unsanitary sexual activity occurring at adult entertainment establishments

25 The prevention of sexual contact between patrons and employees at adult entertainment establishments is unrelated to the suppression of free expression, but serves to address the concerns raised in the findings contained herein.

26. Prohibiting dancers and patrons from engaging in sexual fondling and caressing in adult theaters or adult cabarets would reduce the opportunity for prostitution and thus should deter prostitution and other crimes of a sexual nature.

27. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of an adult entertainment establishment is substantially related to the significant governmental interest of preventing the spread of sexually-transmitted diseases and reducing or eliminating the criminal activity associated with adult entertainment establishments.

28 It is desirable in the prevention of the spread of communicable diseases and in the investigation of criminal activity, to obtain a limited amount of information regarding certain operators and employees who either engage in the conduct which this ordinance is designed to prevent or are likely to be witnesses to such activity.

29. A substantial rational relationship between adult entertainment establishments and sexually related crimes establishes a compelling justification for barring those persons who have committed crimes from the management of such businesses.

30 The fact that an applicant for an adult use license has been convicted of a sexually-related crime leads to a

rational inference that the applicant is more likely to engage in conduct in contravention of this ordinance.

31. The barring of such individuals from management of adult uses for a period of years serves as a deterrent to and prevents the conduct which leads to the transmission of sexually transmitted diseases and to the promotion of that criminal activity associated with adult uses.

32. The general welfare, health, and safety of the citizens of Metropolitan Nashville and Davidson County will be promoted by the enactment of this ordinance.

SECTION 2: Title 6 of the Code of Laws of The Metropolitan Government of Nashville and Davidson County is amended by adding a new Chapter 6.54.

6.54 Licensing and Regulation of Adult Business:

6.54.010 Definitions.

A. Definitions

For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

1. *Adult entertainment* means the regular presentation, for a fee or incidentally to another service, of material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation by patrons therein.

2. *Adult entertainment establishment* means any commercial establishment – including but

not limited to: "adult bookstore", "adult video store", "adult theater", "adult nightclub", sexual encounter center, massage parlor, rap parlor, lingerie modeling, or sauna – which for a fee or incidentally to another service, regularly presents material or exhibitions distinguished or characterized by an emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation by patrons therein. Adult entertainment establishment further means any commercial establishment to which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing sexually oriented motion pictures, sexually-oriented movies, sexually oriented films, adult videos, or wherein an entertainer provides sexually oriented entertainment to a member of the public, a patron or a member.

(a) *Adult bookstore* means an establishment having any of its stock and trade in books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation of the patrons therein, or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, adult videos, sexual y oriented films, or sexually oriented live entertainment, for observation by patrons therein.

(b) *Sexually oriented* means any exhibition of any motion pictures, films, videos, or live performance, display or dance of any type, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers which has a significant or substantial portion of such performance any actual or simulated performance of "specified sexual activities" or exhibition and viewing of "specified anatomical areas".

(c) *Adult theater* means an enclosed building regularly used for presenting films, motion pictures, video cassettes, slides, or other photographic reproductions or other material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation by patrons therein.

(d) *Adult nightclub* means a theater, concert hall, auditorium, nightclub, bar, restaurant, or similar commercial establishment which regularly features live performances that are characterized by any actual or simulated performance of "specified sexual activities" or the exposure of "specified anatomical areas," as defined below.

(e) *Adult video store* means a commercial establishment having any stock in "adult videos" – as defined below – which are rented or sold and presented for a fee or incidentally to another service; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "adult videos", or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical

areas" as defined below for observation by patrons therein.

(f) *Adult videos* means a video, CD, laser disk, or similar medium with a cover that depicts "specified sexual activities" or "specified anatomical areas" or a transparent or less than opaque cover through which "specified sexual activities" or "specified anatomical areas" can be viewed.

3. *Aggravated rape* as defined in The Tennessee Code Annotated § 39-15-502.

4. *Aggravated sexual battery* as defined in The Tennessee Code Annotated § 39-15-504.

5 *Employee* means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult entertainment establishment.

6 *Entertainer* means any person who provides live entertainment within an adult entertainment establishment as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

7. *Indecent exposure* as defined in The Tennessee Code Annotated § 39-15-511.

8. *Location* means a single site for which only one use and occupancy permit would be required

9 *The Metropolitan Area* – General services district of the Metropolitan Government of Nashville and Davidson County

10. *The Metropolitan Council* means the legislative body of The Metropolitan Government of Nashville and Davidson County, Tennessee

11. *Obscenity* as defined in The Tennessee Code Annotated § 39-17-901(10) through (14).

12. *Operator* means any person, partnership, or corporation operating, conducting or maintaining an adult entertainment establishment.

13. *Prostitution* as defined in The Tennessee Code Annotated § 39-13-512

14. *Patronizing prostitution* as defined in The Tennessee Code Annotated § 39-15-13-512.

15 *Promoting prostitution* as defined in The Tennessee Code Annotated § 39-15-13-512.

16 *Rape* as defined in The Tennessee Code Annotated § 39-15-503.

17. *Rape of a child* as defined in The Tennessee Code Annotated § 39-15-522

18. *Sexual battery* as defined in The Tennessee Code Annotated § 39-15-505.

19. *Sexual exploitation of a minor* as defined in The Tennessee Code Annotated § 39-17-1003, § 39-17-1004, and § 39-17-1005.

20. *Specified sexual activities* mean

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Acts of human masturbation, sexual intercourse or sodomy;

(c) Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

21. *Specified anatomical areas* mean:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region,

(ii) Buttocks;

(iii) Female breasts below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely opaquely covered

22. *Statutory rape* as defined to The Tennessee Code Annotated § 39-15-506.

6.54.020 Adult Entertainment Licensing Board

A. Establishment

An adult entertainment licensing board is hereby created and designated the metropolitan adult entertainment licensing board (herein "board").

B. Membership – Terms

1. The board shall consist of five members, who shall have been residents of the metropolitan area for not less than one year, and who shall continue to be eligible so long as they reside in the metropolitan area, to be appointed by the mayor and confirmed by a majority vote of the metropolitan council.

2. At least one of the five members shall be an attorney, and one of the five members shall be a health provider.

3. Of the five members first appointed, two shall be appointed for a term of two years, and two shall be appointed for a term of three years, and one shall be appointed for a term of four years. Thereafter, each member shall be appointed for a term of four years, and shall serve until his/her successor is appointed. Any vacancy other than the expiration of terms shall be filled for the un-expired term

C. Election of officers – Term

The board shall organize by the election of a chair and a vice-chair, who shall serve for a period of one year or until a successor shall have been chosen.

D. Meetings – Quorum required – Minutes and transcript

1. The board shall hold two regular meetings each month at a time fixed by the board, and may hold such special meetings as may be necessary

2. The attendance of at least a majority of the members of the board, not including unfilled positions, shall be required to constitute a quorum for the purpose of transacting business.

3. Minutes shall be kept of the meetings in permanent form and a record shall be kept of the action of the board with respect to every application for a license and/or a permit. The concurring vote of a majority of the members present and voting shall be necessary for the granting, revoking, suspending or any other action involving licenses or permits.

4 No transcript of the proceedings had before the board shall be in any form other than narrative

unless the board shall have been requested to provide for an exact copy of the testimony by an interested party at least twenty-four hours prior to a board meeting. The cost of an exact copy shall be borne by the person requesting the same.

E. Powers and duties.

1. The board shall have jurisdiction over the licensing, regulating and controlling of all adult entertainment establishments as provided herein, located in the metropolitan area.

2 The board may promulgate such bylaws, rules and regulations not inconsistent with state law, the metropolitan charter, or any ordinance, as it deems appropriate for the conducting of its business.

3. The board has the authority to subpoena witnesses to testify before the board

F. Inspectors – Authority.

The board is empowered to employ suitable person(s) as inspectors which inspectors shall not hold any service status. The board shall prescribe the duties of such inspectors so as to enforce the applicable provisions of this title.

G Procedures for Hearings

This section shall apply to all hearings by the board including but not limited to hearings for revocation suspension, or denial of a license/permit.

1 Upon receiving a written request for a hearing, the board shall send the party requesting the hearing a notice stating the time and place of the hearing and the right to be represented by counsel.

2. At the hearing, the party requesting the hearing shall appear on his/her own behalf or be represented by counsel. All witnesses shall be sworn. The chair shall allow the party requesting the hearing to present witnesses on his/her own behalf and to cross-examine all witnesses testifying against him/her.

3. All decisions of the board shall be in writing, setting forth the findings of the board, and shall be signed by the chair or vice-chair Any decisions of the board to deny a renewal, suspend, or revoke a license/permit shall not take effect earlier than ten (10) days after the date the decision was rendered to allow the effected party adequate time to seek judicial review.

4. Minutes shall be kept of all proceedings before the board in permanent form and a record shall be kept of the actions of the board with respect to all hearings.

5 A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. The record must be maintained by the board for a period of ninety days Such record or any part thereof shall be transcribed at the request of any party at such party's expense.

6. Any party desiring a court reporter to be present at the hearing must arrange for the court reporter to be present.

6.54.030 License Required.

A Except as provided in subsection F below, from and after the effective date of this ordinance, no adult entertainment establishment shall be operated or maintained within the metropolitan area without first obtaining a license to operate issued by the board.

B. Any person, partnership, or corporation which desires to operate more than one (1) adult entertainment establishment must have a license for each establishment

C. Only one license nay be issued for each adult entertainment establishment location.

D. No license or interest in a license may be transferred to any person, partnership or corporation.

E. It shall be unlawful for any entertainer or operator to work in or about, or to perform any service directly related to the operation of any unlicensed adult entertainment establishment. It shall be unlawful for any employee to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed adult entertainment establishment while adult entertainment is being presented.

F All existing adult entertainment establishments at the time of the passage of this ordinance must submit an application for a license within one hundred twenty (120) days of the effective date of this ordinance. If a license is not applied for within said one-hundred-twenty day period, then such existing adult entertainment establishment shall cease operations.

6.54.040 Application for license.

A. Application

1. Any person, partnership, corporation or any other entity desiring to secure a license shall make application to the board. The applicant shall file the original application with six copies. The original application shall be dated by the board and held in the files of the board. A copy of the application shall be

distributed promptly by the board to: the police department, the department of codes administration, the health department, the fire department, and to the applicant.

2 Application forms shall be available at the office of the board

3 The application form shall include all the information indicated in subsection 6.54.040(5)(a) through (l).

4. The following persons must obtain a license: any partner of a partnership who will participate in the day to day operation of the business, any officer or director of a corporate applicant, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will participate in the day to day operation of the business.

5. The applicant shall furnish the following information under oath:

(a) Name and address, including all aliases (business address is sufficient);

(b) Proof that the individual is at least eighteen (18) years of age;

(c) All residential addresses of the applicant for the past three (3) years (for the purpose of facilitating the police investigation into the applicants criminal background);

(d) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application (for the purpose of facilitating the police investigation into the applicants criminal background);

(e) Whether the applicant previously operated in this or any other county, city or state under an adult entertainment establishment license or similar business license. Whether the applicant has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;

(f) All violations, convictions, or any or pleas of *nolo contendere* to any crime of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crimes of a sexual nature, or any crime involving moral turpitude.

(g) All citations issued and sustained by a court within the past two years for violations of any provisions of the metropolitan zoning code applicable to adult entertainment establishments, including but not limited to sections 17.12.080(29), 17.60.020, 17.64.270.

(h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant. (for the purpose of facilitating the police investigation into the applicants criminal background)

(i) The address of the adult entertainment establishment to be operated by the applicant.

(j) If the applicant is a corporation the application shall specify the name of the corporation the date and state of incorporation the name and address of the registered agent and the name and

address of all officers and directors of the corporation, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will be involved in the day to day operation of the business.

(k) If the applicant is a partnership, joint venture, or any other type of business the application shall specify the name and address of all persons who will be involved in the day to day operation of the business

(l) A statement by the applicant that he/she is familiar with the provisions of this ordinance and is in compliance with them.

6 If the applicant intends to have booth, stalls, cubicles, or rooms on the premises for the purpose of viewing sexually oriented movies, sexually oriented films, or adult videos, or sexually oriented live exhibitions, then along with the application, the applicant shall provide the board with his/her application a diagram, drawn to scale, of the premises including but not limited to the location and layout of all booths, stalls, cubicles, or rooms and the location of the clerk/managers stand or counter. Though the diagram shall be drawn to scale, it does not have to be professionally prepared

B. Inspections.

1. The police department, codes department, fire department, and health department shall, upon receipt of a copy of the application, inspect the premises to insure that the establishment complies with the metropolitan code including the applicable zoning ordinances, fire code statutes, ordinances and regulations, and the health code statutes, ordinances and regulations.

2. If a diagram is required to be submitted under 6.54.040(A)(6), then the code inspector shall confirm the layout of the booths, stalls, cubicles, or rooms complies with the submitted diagram and the requirements set out in 6.54.050(A)

3. The police department, codes department, fire department, and health department shall complete their respective inspections and shall communicate the results of their respective inspections to the board in writing within thirty (30) days of receipt of the application. The writing shall end with one of the following statements:

The location at _____
complies with the relevant and applicable code sections and applicable rules and regulations of the board.

The location at _____
does not comply with the relevant and applicable code sections or does not comply with the relevant and applicable rules and regulations of the board. It is in violation of the following provisions *Section numbers of code violations*

4. All ongoing businesses shall be inspected in accordance with 6.54.040(B)(1) and (2) regardless of whether the business already has a valid use and occupancy permit.

5. If the building/structure has a valid use and occupancy permit, the applicant shall provide the board with a copy of the valid use and occupancy permit which shall be made part of the file.

C. Board Action on Inspection Results.

1. Within twenty (20) days of receiving the results of the investigation conducted by the police

department, codes department, fire department, and health department the board will meet and determine if the applicant is in compliance with the applicable statutes, ordinances, and regulations. If the board determines that the applicant is in compliance with the applicable statutes, ordinances, and regulations, including but not limited to the zoning code, and the applicant has not committed any of the crimes listed in 6.54.040(A)(5)(f), is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application then the board shall grant the license.

2. Any applicant convicted of or who pleaded *nolo contendere* to any crime of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be ineligible to receive a permit for the time period described below. Such denial and the reason for the denial shall be mailed to the applicant within ten (10) days of receiving the results of the investigation. The applicant may re-apply to the board once the time period has expired

(a) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction plea, or release from confinement imposed for the conviction whichever is later.

(b) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(c) The time is computed from the date of the application to the date of the conviction, plea, or release from confinement based on the conviction.

3. If it is determined by the board, using the application and the investigation information, that the applicant has violated the provisions of the zoning code applicable to adult entertainment within the past two years, then the applicant is ineligible for a license for one (1) year from the date the citation was sustained. A violation of the zoning code shall be evidenced by a citation which has been sustained by any court in the metropolitan area.

4. If a diagram is required under 6.54.040(A)(6) and based on the code investigation, the board determines that the actual structure does not comply with 6 54 050(A) or the submitted diagram, then the applicant is not in compliance with this code section and the license shall be denied until the applicant is in compliance.

5 If in the course of the investigation it is discovered any false or misleading statement or information was given on the application, or material facts were omitted from the application, the board shall deny the application.

(a) The applicant shall be ineligible to receive a permit for one (1) year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6.54.040(A)(5)(f).

(b) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a license

until all persons who will participate in the day to day operation of the business are eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(c) If the misleading statements or omissions referred to any of the crimes listed in 6 54.040(A)(5)(f), then the applicant shall not be eligible to receive a permit until the time period described in 6 54.040(C)(2)(a) through (c) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer

6. Within twenty (20) days of receiving the results of the investigation conducted by the police department, codes department, fire department, and health department, if the board shall determine that the applicant is not in compliance with the applicable statutes, ordinances, and regulations, the applicant shall be notified in writing that the license is denied for failing to comply with applicable statutes, ordinances, and regulations This notice shall specify the violation If the applicant can come into compliance as described m subsections 6.54.040(D) the denial shall not take effect The notice shall also specify that the applicant may request a hearing within ten (10) days as described in 6.54.040(E), cure the violation within fifteen (15) days and request re-inspection or request an extension of time as described in 6.54.040(D.).

7 The board has the discretion to hold any and all applications for further investigation if: (a) the initial investigation indicates a need for additional information, or (b) the initial investigation requires investigation into out of state records; or (c) verification of out of state employment is needed. Such additional investigation shall not exceed an additional

thirty (30) days, from the end of the initial twenty (20) days specified in 6.54.040(C)(6), unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied in accordance with this section.

8. Whenever an application is denied or held for further investigation, the board shall advise the applicant in writing of the reasons for such action.

9. Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance, shall constitute an admission by the applicant that he/she is ineligible for such license and shall be grounds for denial thereof by the board. This in no way requires the applicant to agree to additional time extensions beyond that allowed in subsection 6.54.040(C)(7).

10. No license shall be issued unless the police department has investigated the applicants criminal history by entering the information included on the application into the appropriate computer database or otherwise obtaining the information. The results of that investigation shall be filed in writing (this may be the print-out given by the computer database) with the board no later than thirty (30) days after the date application was received by the police department. This thirty (30) day period is the same thirty (30) days described in 6.54.040(B)(3).

D. Extensions of Time for the Applicant

1. If the license is denied under subsection 6.54.040(C)(6), the applicant may re-institute his/her

application by notifying the board in writing that he/she has come into compliance and requests re-inspection

(a) The applicant has fifteen (15) days from the mailing of the notice, given in 6 54.040(C)(6) to cure the violation and notify the board. If the violations have been corrected within the fifteen (15) day period, the owner has the responsibility to contact the board.

(b) The board has five days to notify the appropriate inspector that the applicant believes he/she has come into compliance

(c) Upon notification by the board the appropriate inspector shall return to the location for re-inspection and shall submit another written report as indicated in subsection 6.54.040(B)(3). The inspector has ten (10) days from the date he/she was notified by the board to re-inspect the premises and inform the board as to whether the applicant has come into compliance.

(d) Based on the report of the inspector(s), the board shall determine if the applicant has come into compliance and if so the board shall issue the license at the next regular meeting.

(e) If the owner fails to either contact the appropriate inspector to report that the code violations have been corrected or if the code violations have not been corrected then the application is denied in accordance with 6 54.040(C)(6)

2. If the process of curing the violation requires more time than that provided in 6 54.040(D)(1), the applicant may request an extension from the board If

the applicant does not make such a request in the time allotted the application is denied in accordance with 6.54 040(C)(6) and 6.54 040(D)(3).

(a) The request for an extension must be made in writing within fifteen (15) days from the mailing of the notice given in 6.54.040(C)(6).

(b) The board shall hear the applicants request for an extension at the next regular meeting.

(c) The hearing on the extension shall follow the same rules as set out in 6.54.020(G) except that the decision of the board shall grant or deny the extension and a decision to grant an extension shall take effect immediately.

(d) An extension shall only be granted when board decides that the applicant has demonstrated a good faith effort to make the necessary repairs or cure the violation(s) in a timely manner.

3. If the applicant fails to follow the procedure set out in 6.54.040(D)(1) including the time limit or fails to get an extension within the time allowed and in accordance with 6.54.040(D)(2) then the application is denied and the applicant must reapply to obtain a license. Following the procedure set out in 6.54.040(D)(1) or 6.54.040(D)(2) requires no additional fees. Once the deadlines to cure the violation or ask for an extension of time have passed, the notice sent in 6.54.040(C)(6) shall be treated as a denial of the license.

E. Denial of the License Application

1. When an application is denied, the applicant has the right to request a hearing within ten (10) days of notification.

(a) The request shall be in writing and filed with the board within ten (10) days of notification of the denial.

(b) Once the request is received by the board, the board shall schedule a hearing at the next regular meeting of the board.

(c) At the hearing, the applicant may present evidence as to why his/her license should not be denied

(d) The board shall hear all relevant evidence regarding the license application and the denial and shall affirm or reject the denial of the application at the hearing and in writing stating the reasoning for the boards decision. Denial of the application can be immediately appealed by the applicant to the Chancery Court of Davidson County. The metropolitan department of law may initiate an action for a declaratory judgment

(e) The denial of the license shall be mailed by US mail within ten (10) days to the address of the applicant as listed on the application.

(f) Failure on the part of the applicant to request a hearing within the time limit provided is a waiver of the right to a hearing by the board. This waiver has no effect whatsoever on the applicants right to appeal any denial to the Chancery Court of Davidson County.

2. Any denial of an application for a license may be immediately appealed to the Chancery Court of Davidson County The metropolitan department of law may institute proceedings for a declaratory judgment

6.54.050 Standards for issuance of license.

A. Physical Layout of Adult Entertainment Establishment.

1. Any adult entertainment establishment having available for customers, patrons or members any booth, room or cubicle for the private viewing of any adult entertainment, including but not limited to sexually oriented films, sexually oriented movies, adult videos or sexually oriented live exhibitions, shall submit a diagram under 6.54.040(A)(6) and the diagram submitted must be substantially the same as the structure observed by the inspector. Further, the structure and the diagram shall comply with the following requirements:

2. Access. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult entertainment establishment and shall be unobstructed by any door, gate, lock or other control-type devices.

3. Construction. Every booth, room or cubicle shall meet the following construction requirements.

(a) Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any nonpublic areas by a solid or opaque wall;

(b) Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same,

(c) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth textured and easily cleanable;

(d) The floor must be light colored, nonabsorbent, smooth textured and easily cleanable; and

(e) The lighting level of each booth, room or cubicle when not in use shall be a minimum of ten (10) foot candles at all limes as measured from the floor.

4. Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

5. The provisions enunciated in subsections 1 through 3 of this section shall not apply to bathrooms unless the bathroom contains any equipment which would allow the viewing of sexually oriented films, sexually oriented movies, adult videos or sexually oriented live exhibitions.

B. The applicant.

1. To receive a license to operate an adult entertainment establishment, an applicant must meet the following standards.

(a) If the applicant is an individual the applicant shall be at least eighteen (18) years of age

(b) If the applicant is a corporation all officers directors and stockholders required to be named under section 6.54.040(A)(5)(j) shall be at least eighteen (18) years of age;

(c) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest all

persons having a financial interest in the business and who have the ability to control or be involved in the day to day operation of the business shall be at least eighteen (18) years of age.

2 No individual applicant, no officer, director or stockholder required to be named under Section 6.54.040(A)(5)(j) and no partners required to be named under Section 6.54.040(A)(5)(k) who shall have been convicted of or have plead *nolo contendere* to any crime of rape. aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be eligible to receive a permit for the time period described below.

(a) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(b) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(c) The time is computed from the date of the application to the date of the conviction, plea, or release from confinement based on the conviction.

3. The applicant shall not have given any false or misleading information on the application, or omitted any material facts from the application.

(a) If the applicant gave any false or misleading information or omitted any material facts, than the applicant shall be ineligible to receive a license for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6.54.050(B)(2).

(b) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a license until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(c) If the misleading statements or omissions referred to any of the crimes listed in 6.54.050(B)(2) then the applicant shall not be eligible to receive a permit until the time period described in 6.54.050(B)(2)(a) through (c) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(d) If the misleading statements or omissions referred to violations of the zoning code then the applicant shall not be eligible to receive a permit until the time period described in 6.54 050(B)(4) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

4. No applicant shall have been found to have previously violated chapter 6.54 or violated the metropolitan zoning code applicable to adult entertainment

establishments, including but not limited to sections 17 12.080(29), 17.60.020, 17 64.270 as evidenced by citations issued and sustained by a court within one (1) year immediately preceding the date of the application. If such violations exist the applicant shall be ineligible for a license for one (1) year from the date the citation was sustained

6.54.060 Permit Required.

In addition to the license requirements previously set forth for owners and operators of adult entertainment establishments no person shall be an entertainer in an adult entertainment establishment without first obtaining a valid permit issued by the board

6.54.070 Application for permit.

A. Application.

1. Any person desiring to secure a permit shall make application to the board. The original application with four copies shall be filed with and dated by the board. A copy of the application shall be distributed promptly by the board to the metropolitan nashville police department, and to the applicant.

2. The application for a permit shall be upon a form provided by the board. An applicant for a permit shall furnish the following information under oath:

(a) Name and address including all aliases,

(b) Written proof that the individual is at least eighteen (18) years of age,

(c) All residential addresses of the applicant for the past three (3) years (for the purpose

of facilitating the police investigation into the applicants criminal background);

(d) The applicants height, weight, color of eyes, and hair(for the purpose of facilitating the police investigation into the applicants criminal background);

(e) The business, occupation, or employment of the applicant for five (5) years immediately preceding the date of the application (for the purpose of facilitating the police investigation into the applicants criminal background);

(f) Whether the applicant while previously operating in this or any other city or state under an adult entertainment establishment permit or similar business for whom applicant was employed or associated at the time has ever had such a permit revoked or suspended the reason therefor and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation;

(g) Whether the applicant has ever been convicted of or pleaded *nolo contendere* to any and all crimes of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction;

(h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant (for the purpose of facilitating the police investigation into the applicants criminal background); and

(i) A statement by the applicant that he/she is familiar with the provisions of this ordinance and is in compliance with them.

B. Standards for Issuance of Permit.

1 To receive a permit as an entertainer, an applicant must meet the following standards:

(a) The applicant shall be at least eighteen (18) years of age;

(b) An applicant who has been convicted of or who pleaded *nolo contendere* to any crime of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be ineligible to receive a permit for the time period described below.

(i) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(ii) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(iii) The time is computed from the date of the application to the date of the conviction,

plea, or release from confinement based on the conviction.

(c) The applicant shall not have given any false or misleading information on the application, omitted any material facts from the application.

(i) If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a permit for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6 54.070(A)(2)(g)

(ii) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a permit until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer

(iii) If the misleading statements or omissions referred to any of the crimes listed on 6.54.070(A)(2)(g) then the applicant shall not be eligible to receive a permit until the time period described in 6.54.070(B)(1)(b)(i) through (iii) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(d) The applicant shall not have been found to violate any provision of chapter 6.54 within one (1) year immediately preceding the date of the application

C Investigation.

The police department shall investigate the criminal history of the applicant and submit this history in writing (this may be the print-out generated by a computer database) to the board within thirty (30) days of receipt of the application by the police department.

D Board Action Based on the Investigation.

1. The board shall convene to review the application and the police investigation report within fifteen (15) days of receiving the results of the investigation conducted by the police department. If the board determines, based on the application and the report of the police department that the applicant has not committed any of the crimes listed in 6.54 070(A)(2)(g), is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application the board shall grant the permit to the applicant at that meeting. Information regarding prior residence shall never be the basis for the denial of a permit.

2. Any applicant convicted of or who pleaded *nolo contendere* to any crime of rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be ineligible to receive a permit for the time period described below. Such denial and the reason for the denial shall be mailed to the applicant with in ten (10) days of the meeting described above in 6.54.070(D)(1). The applicant may re-apply to the

board once the time period described below has expired.

(a) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(b) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(c) The time is computed from the date of the application to the date of the conviction, plea, or release from confinement based on the conviction.

3. If in the course of the investigation it is discovered any false or misleading statements or information was given on the application, or material facts were omitted from the application, the board shall deny the application.

(a) The applicant shall be ineligible to receive a permit for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6.54.070(A)(2)(g).

(b) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a permit until he/she is eighteen or until one year has passed from the date of the application

which contained the misleading statements or omissions whichever is longer.

(c) If the misleading statements or omissions referred to any of the crimes listed in 6.54.070(A)(2)(g) then the applicant shall not be eligible to receive a permit until the time period described in 6.54.070(D)(2)(a) through (c) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

4. The board may hold any and all applications for further investigation if (a) the initial investigation indicates a need for additional information; or (b) the initial investigation requires investigation into out-of-state records, or (c) verification of out of state employment is needed Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied in accordance with this section.

5. Whenever an application is denied or held for further investigation, the board shall advise the applicant in writing of the reasons for such action.

6 When an application is denied, the applicant has the right to requests a hearing within ten (10) days of receipt of notification of the denial.

(a) The request shall be in writing and filed with the board within ten (10) days of receipt of notification of the denial.

(b) Once the request is received by the board, the hearing will be held at the next regular meeting of the board.

(c) At the hearing, the applicant may present evidence as to why his/her permit should not be denied.

(d) The board shall hear evidence on the issues and shall affirm or reject the denial of an application at the hearing and in writing stating the reasoning for the boards decision.

(e) The denial of the permit shall be mailed by US mail within ten (10) days to the address of the applicant as listed on the application.

(f) Failure on the part of the applicant to request a hearing within the time limit provided is a waiver of the right to a hearing by the board. This waiver has no effect whatsoever on the applicants right to appeal any denial to the Chancery Court of Davidson County.

7. Any denial of the application for a permit may be immediately appealed to the Chancery Court of Davidson County. The metropolitan department of law may also initiate proceedings for a declaratory judgment in the Chancery Court of Davidson County.

8. Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his/her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he/she is ineligible for such permit and shall be grounds for denial thereof by the board. This provision in no way requires the applicant to agree to any extensions beyond the extension described in 6.54.070(D)(4).

6.54.080 Fees.

A. A license fee of five hundred dollars ($500.00) shall be submitted with the application for a license. If the application is denied one-half (½) of the fee shall be returned.

B. A permit fee of one hundred dollars ($100.00) shall be submitted with the application for a permit. If the application is denied one-half (½) of the fee shall be returned.

6.54.090 Display of license or permit.

A. The license shall be displayed in a conspicuous public place in the adult entertainment establishment.

B The permit shall be carried by or be accessible to the entertainer during that entertainer's working hours and shall be displayed upon request of any customer, any member of the police department, or any person designated by the board

C. If the business for which a license was issued ceases to exist in that a majority of the business assets have been liquidated, or the business has closed and ceased operations, then the license shall be turned into the board.

6.54.100 Renewal of license or permit.

A. Every license/permit issued pursuant to this ordinance will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked and must be renewed before operation is allowed in the following year

B. Any operator desiring to renew a license or any entertainer desiring to renew a permit shall make application to the board The application for renewal must be filed not later than sixty days (60) days before the license/permit expires. The original application for renewal plus six copies shall be filed and dated by the board.

C. The board shall send a copy to the same departments who would receive a copy of the initial application. These departments shall process the application in the same manner and within the same time limits which apply to the initial application

D. The board shall provide the applicant with a copy of the application from the previous year and a new application form.

E The renewal form shall be the same form described in 6.54.040(A) for a license and 6.54.070(A) for a permit except as indicated below in subsection 6.54.100(H).

F. For a renewal the applicant may fill out the new form in its entirety or fill in any information which has changed over the year and is now different than the information indicated on the application from the prior year.

G. If the applicant chooses to only include information concerning items which have changed he/she will swear to the accuracy of both the information contained in the renewal form and the information attached from the prior year.

H. The renewal application form shall be the same form described in 6.54.040(A) for a license or 6.54.070(A) for a permit except the final line shall state:

> *I swear the information I have given in the application from 199_ is still accurate and any facts or*

circumstances which have changed are indicated in this application for a renewal of the license/ permit

_____

signature of applicant

I. A license renewal fee of five hundred dollars ($500.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars ($100.00) shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (½) of the fee collected shall be returned

J. A permit renewal fee of one hundred dollars ($100.00) shall be submitted with the application for renewal. In addition to said renewal fee, a late penalty of fifty dollars ($50.00) shall be assessed against the applicant who files for renewal less than sixty (60) days before the license expires. If the application is denied, one-half (½) of the fee shall be returned.

K The application for a renewal is subject to the same rules and limitations including the time limits described for the initial application including subsections 6 54.040, 6.54 050, 6.54.070, and 6.54.140 (causes for revoking a license/permit) Giving false or misleading information or omitting material information on a renewal application is grounds for denying the renewal of the license/permit.

L. Denial of an application to renew a license/permit can be appealed to the board

1. A hearing by the board shall be requested, by the applicant or the applicants agent, within ten days of the denial for the renewal.

2 The board shall hold the hearing at the next regular meeting where the applicant will be given an opportunity to testify and cross examine all witnesses.

3. The previous license/permit shall continue to be valid until the board has rendered a decision and the ten days required in subsection 6.54.020(G)(3) have passed.

M. The denial of any renewal for a license/permit may be appealed to the Chancery Court of Davidson County by the applicant. The metropolitan department of law may initiate proceedings for a declaratory judgment in the Chancery Court for Davidson County.

6.54.110 Hours of operation.

A. All adult entertainment establishments shall be closed between the hours of 2:00 a.m. and 6:00 a.m. Monday through Saturday and between the hours of 3:00 a.m. and 12:00 noon on Sundays.

B. All public areas of every adult entertainment establishments shall be open to inspection at any time during normal business hours by the following departments: police, codes, fire, and health.

6.54.120 Responsibilities of the operator.

A. An operator is responsible for the conduct of all entertainers while on the licensed premises and any act or omission of any entertainer constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed subject to the limit described in subsection 6.54.140(11)

B There shall be posted and conspicuously displayed in the common areas of each adult entertainment establishment a list of any and all entertainment provided on the premises Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing sexually oriented motion pictures, sexually oriented films, sexually oriented movies, sexually oriented live entertainment or adult videos shall be considered entertainment.

C No employee of an adult entertainment establishment shall allow any minor to loiter around or to frequent an adult entertainment establishment or to allow any minor to view adult entertainment as deemed herein.

D. Every adult entertainment establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises having at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. Further any wall forming any portion of the booths, cubicles, rooms or stalls shall be solid and without any openings, extended from the floor to a height of not less than six feet. This section shall be construed in conjunction with 6.54 050(A)

E It shall be unlawful to install enclosed booths, cubicles, rooms or stalls for the purpose of secluded viewing of sexually oriented motion pictures, sexually oriented movies, sexually oriented films or adult videos or sexually oriented live entertainment

F The operator shall be responsible for and shall provide that any booth, cubicle, room, stall or area used for the purpose of viewing sexually oriented motion pictures, sexually oriented movies, sexually oriented films or adult videos or sexually oriented live entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

G. No operator, entertainer of an adult entertainment establishment shall demand or collect all or any portion of a fee for entertainment before its completion. This provision does not apply to any fee charged at the door for admittance to the premises, or any fee charged for food or beverages.

H. A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Adult Entertainment Establishment is regulated by The Metropolitan Code of Nashville and Davidson County (Code Section #s). *Entertainers Are*

a Not permitted to engage in any type of sexual conduct;

b Not permitted to demand or collect all or any portion of a fee for entertainment before its completion

I. It shall be the duty of the operator, all entertainers and employees, on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, to ensure that the line of sight and view area between the main floor area and any stalls, booths, cubicles, or rooms remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that

any patron is permitted access to any room, booth, stall, or cubicle.

J. It shall be the duty of the operator, all entertainers and employees on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

K No operator, entertainer or employee on the premises for furthering the business not including independent contractors on the premises for repairs or construction, shall allow openings of any kind to exist between viewing rooms, booths, stalls or cubicles, and no person shall make or attempt to make an opening of any kind between viewing rooms, booths, stalls or cubicles.

L. The operator or his/her agent shall, during each business day, regularly inspect the walls between the viewing rooms, booths, stalls or cubicles to determine if any openings or holes exist. If such openings exist it is the duty of the operator to repair the damage as soon as possible. No patron shall be permitted access to a viewing room, booth, stall or cubicle where an opening or a hole exists. It shall be the duty of the operator to ensure those rooms are unoccupied by patrons until the opening is repaired and covered.

6.54.130 Prohibitions and unlawful sexual acts.

A. No operator, entertainer, or employee of an adult entertainment establishment shall permit to be performed, offer to perform, perform, or allow customers employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

B No operator, entertainer, or employee shall encourage or permit any person upon the premises to touch caress or fondle the breasts, buttocks, anus, or genitals of any other person

C. No entertainer, employee, or customer shall be permitted to have any physical contact with any other entertainer, employee, or customer on the premises during any performance All performances shall only occur upon a stage at least eighteen inches (18) above the immediate floor level and removed at least six (6) feet from the nearest customer.

6.54.140 Revocation or suspension of license/permit.

A. The board shall revoke a license or permit for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application, or material facts were omitted from any application,

2. The operator or entertainer becomes ineligible to obtain a license or permit under 6.54.050(B) and 6.54.070(B).

3. Any cost or fee required to be paid by this ordinance is not paid;

4. An operator employs an entertainer who does not have a permit or provides space on the premises whether by lease or otherwise to an independent contractor who performs or works as an entertainer without a permit;

5. Any intoxicating liquor, cereal malt beverage, narcotic, or controlled substance is sold or allowed to be sold on the licensed premises;

6. Any operator employee or entertainer sells, furnishes, gives, displays, or causes to be sold, furnished, given, or displayed to any minor any adult entertainment or sexually oriented material,

7. Any operator, employee, or entertainer denies access to law enforcement personnel during business hours to any portion of the licensed premises wherein adult entertainment is permitted or to any portion of the licensed premises wherein adult material is displayed or sold;

8. Any operator allows continuing violations of the metropolitan code or the rules and regulations of the following departments: health, codes, fire, or zoning, or any violations of this chapter.

9. Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition in accordance with the applicable statutes, ordinances, and regulations of the federal, state, and local governments.

10. The attempted transfer of a license/permit or any interest in a license/permit shall automatically and immediately revoke the license

B. In the case of a first offense by an operator where the conduct was solely that of an entertainer the penalty shall not exceed a suspension of thirty (30) days if the board shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

C Any and all other violations of this chapter shall be subject to either a fine or a suspension or both a fine and a suspension.

D The board shall follow the following procedure for revoking or suspending a license or a permit.

1. Before revoking or suspending any license or permit the board shall give the operator or entertainer least ten (10) days written notice of the charges against him/her. In such cases the charges shall be specific and in writing except under 6.54.140(A)(10) above

2. The licensee/permittee shall have the opportunity for a hearing before the board at which time the operator or entertainer may present evidence bearing upon the question of suspension/revocation. The licensee/permittee has fifteen days from the receipt of the notice described above in 6.54.140(D)(1) to notify the board that he/she wishes to have a hearing.

3. The board shall hear all the evidence pertaining to the revocation or suspension at the next regular meeting.

4. If the licensee/permittee fails to request a hearing before the board within the fifteen days described in 6.54.140(D)(2) he/she will have waived the right to a hearing by the board. This has no effect, whatsoever, on the licensee's/ permittee's right to appeal any revocation to the Chancery Court of Davidson County.

5 If the licensee/permittee requests a hearing the license/permit shall remain in effect and valid during the appeal to the board until such time as the hearing is held. Further if the

license/permit is suspended or revoked the suspension/revocation shall not go into effect until the minimum ten (10) day waiting period has passed as described in 6.54.020(G)(3).

E. Any operator or entertainer whose license or permit is revoked shall not be eligible to receive a license or permit for one (1) year from the date of revocation

6.54.150 Penalties and prosecutions.

A. Any individual, partnership, or corporation violating any of the provisions of this chapter shall be subject to any of the following penalties:

1. $500 00 for each offense; and/or

2. a suspension of any license/permit for a specified period of time for each offense; or

3. revocation of any license/permit for any conduct listed in subsection 6.54.140.

B. The penalty of suspension may not be combined with revocation A fine alone can be a penalty or it may be combined with a suspension.

C. Each violation of this ordinance shall be considered a separate offense and any continuing violation shall be considered a separate offense for each day of the violation

6.54.160 Remedies.

Any revocation or suspension of a license or a permit or any denial of a license or a permit or any denial to renew a license or a permit under the provisions of this chapter may be immediately appealed to the Chancery Court of Davidson County by the of Davidson County

by the applicant. Any fine levied under the provisions of this section may be immediately appealed to the Chancery Court of Davidson County by the applicant. The metropolitan department of law may institute proceedings for a declaratory judgment in the Chancery Court of Davidson County.

6.54.180 Invalidity of part.

Should any court of competent jurisdiction declare any section, clause, or provision of this ordinance to be unconstitutional, or any other ordinance of the metropolitan government unconstitutional, such decision shall effect only such section, clause, provision, or ordinance so declared unconstitutional, and shall not effect any other section, clause or provision of this ordinance.

SECTION 2: No application for a license or a permit shall be accepted or demanded until August 1, 1997.

SECTION 3: This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO LEGALITY OF FORM AND COMPOSITION:	INTRODUCED BY:
/s/ Shayna Abrams	/s/ [Illegible]
Metropolitan Attorney	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]
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/s/ [Illegible] /s/ [Illegible]
/s/ [Illegible] /s/ [Illegible]
/s/ [Illegible]

APPROVED AS TO AVAILABILITY OF FUNDS:

MEMBERS OF COUNCIL

/s/ [Illegible]
/s/ [Illegible]

I, being under oath, do certify this is a true and exact copy of Ordinance No 097-796 of The Metropolitan Government of Nashville and Davidson County, Tennessee which passed third and final reading on August 19, 1997, at the meeting of the Metropolitan Council held on that date, and is now recorded in Book No. M59, Page 160.

Witness my hand and the Seal of The Metropolitan Government of Nashville and Davidson County, Tennessee, this 25th day of August, 1997.

/s/ [Illegible]
Metropolitan Clerk

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me, by Marilyn S. Swing, this 25th day of August, 1997.

/s/ [Illegible]
Notary Public

My Commission expires 09/27/97

DUPLICATE

METROPOLITAN COUNTY COUNCIL

Bill No. O97-796

AN ORDINANCE AMENDING TITLE 6 OF THE METROPOLITAN CODE OF LAWS BY ADDING A NEW CHAPTER 6.54, LICENSING AND REGULATION OF ADULT ENTERTAINMENT AND ADULT BUSINESSES.

(Filed May 27, 1997)

Introduced JUN 3 1997

Passed first Reading JUN 3 1997

Referred to BUDGET & FINANCE; CODES; PUBLIC SAFETY; HEALTH, HOSPITALS & SOCIAL SERVICES COMMITTEES

~~Amended~~ DEFERRED JUN 17 1997 AMENDED & DEFERRED INDEFINITELY JUL 15 1997

AMENDED & *Passed second Reading* AUG 7 1997

Referred to _____

Passed third Reading AUG 19 1997

Approved AUG 25 1997

By [Illegible]
Metropolitan Mayor

Departments Notified _____

Advertised _____

Amendment No. 1
To
Bill No. O97-796

Mr. President:

I move to amend Bill No. O97-796 by adding a new sub-paragraph F to Section 6.54.070 to read as follows:

F. The permit carried by the entertainer shall contain only the following information: 1) A photo identification as provided by the applicant. 2) A computer generated number assigned to each applicant, corresponding to the file maintained on each applicant by the adult entertainment licensing board, and 3) The applicant's date of birth as indicated on the application.

INTRODUCED BY:

/s/ Chris Ferrell
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 2
TO
BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 by deleting the words "August 1" wherein it appears in Section 2,

on page 25, and placing in lieu thereof the words "November 1."

INTRODUCED BY:

/s/ Chris Ferrell
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 3
TO
BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 Section 2, by amending Section 6.54.010(A)(2) as follows:

1. Delete the definition of adult bookstore in Section 6.54.010(A)(2)(a) and substitute a new definition as follows:

> (a) *Adult bookstore* means an establishment having a majority of its stock and trade or a majority of its floor space in books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation of the patrons therein; or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, adult videos, sexually oriented films, or sexually oriented live entertainment, for observation by patrons therein.

2. Delete the definition of adult video store in Section 6.54.010(A)(2)(e) and substituting a new definition as follows:

(e) *Adult video score* means a commercial establishment having a majority of its stock or a majority of its floor space dedicated to "adult videos" – as defined below – which are rented or sold or presented for a fee or incidentally to another service; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "adult videos", or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation by patrons therein.

INTRODUCED BY:

/s/ **Chris Ferrell**
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 4
TO
BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 by adding the words "on the premises for furthering the business but not including independent contractors on the premises for repairs and construction" after the word "employee" and before ", or customer shall be

permitted" wherein it appears in 6.54.130(C) Section 2.

INTRODUCED BY:

/s/ Chris Ferrell
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 5

TO

ORDINANCE NO. 097-796

Mr. President:

I move to amend Ordinance No. 097-796 as follows:

(1) By amending Section 6.54.110 of the Ordinance by adding a new Subsection (C) as follows:

> "(C) That Subsection (A) shall have no application to any premises within the historically significant area as defined in Section 6.54.130(D)."

(2) By amending Section 6.54.130 of the Ordinance by adding a new Subsection (D) as follows:

> "(D) Subsection (C) shall have no application to any premises wherein the building is less that twenty (20) feet in width and the ceilings support joyces of the premises are no more than 7-1/2 (seven and one-half) feet from the floor and which premises are located in a historically significant area and the business on said premises has been in operation for at least five (5) years.

Historically Significant Area for this purpose shall be defined as follows: That area of downtown Metropolitan Nashville bound by Second Avenue North, Church Street, Fourth Avenue North, and Union Streets."

INTRODUCED BY:

/s/ [Illegible]
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 6

TO

BILL NO. O97-796

Mr. President:

I move to amend Bill No O97-796 by

1 Deleting 6 54.110(C) which states

Subsection (A) shall have no application to any premises within the historically significant area as defined in Section 6.54.130(D)

2 Deleting 6.54 130(D) which states

Subsection (C) above shall have no application to any premises wherein the building is less than twenty (20) feet in width and the ceilings support joists of the premises are no more that 7½ (seven and one-half) feet from the floor, and which premises are located in a historically significant area and the business on said premises has been in operation for at least five (5) years

Historically significant Area for this purpose shall be defined as follows: That area of downtown Metropolitan Nashville bound by Second Avenue North, Church Street, Fourth Avenue North, and Union Streets

3 Amending Section 6 54 130(C) by deleting the word "six (6)" after "and removed at least" but before "feet from the nearest customer" and placing in lieu thereof the word "three (3)"

4 Amending Section 6 54 130(A) by adding the words "on the premises" after the words "of the genitalia"

5 Amending Sections 6 54.040(E)(2), 6 54 070(D)(7), 6 54 100(M), and 6 54 160 by adding the sentence "If the applicant or the permitee/licensee chooses to appeal by filing a writ of certiorari then The Metropolitan Government shall file the record of all proceedings to date (the date of the filing) with the court within ten (10) days from the date the Metropolitan Government was served" at the end of the paragraph

6. Amending Section 6 54.030(F) by deleting the words "at the time of the passage of this ordinance" after the words "All existing adult entertainment establishments" and before the words "must submit an application" By further amending Section 6 54 030(F) by adding subsection 1 and 2 as follows

1 All businesses which apply for a license within the one-hundred-twenty day period may continue to operate the adult business described in the application until the board has heard the application and voted to grant or deny the application as described in 6 54 040

2. Any appeal regarding the denial of the application shall be in accordance with 6.54.040(E)(2)

7. Amending Section 6.54.060 by lettering the existing paragraph as Section "A" and adding a Section "B" and a Section "C" as follows

> B All entertainers wishing to perform adult entertainment at an adult entertainment establishment shall have forty-five days from the date this ordnance becomes effective to obtain and submit an application for a permit All entertainers which apply for a permit within the forty-five day period may continue to operate at an adult entertainment establishment until the board has heard the application and voted to grant or deny the application
>
> C. If the application any appeal regarding the denial of the application shall be in accordance with 6.54 070(D)(6) and (7)"

8 Amending section 6.54.110 by deleting the time "2 00 am" and substituting in lieu thereof the time "3 00 am" after the words "between the hours of" and before "and 6 00 am" and by deleting the time "6 00 am" and substituting in lieu thereof the time "8 00 am" after the word "and" and before the words "Monday through Saturday"

INTRODUCED BY

/s/ [Illegible]
Member of Council

/s/ [Illegible]

ADOPTED: AUGUST 7, 1997

AMENDMENT NO. 7

TO

BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 by

1. Deleting the words "adult entertainment" and substituting in lieu thereof the words "sexually oriented" wherever the words appear in the ordinance except as specified below.

2. Deleting the words "adult entertainment establishment" and substituting in lieu thereof the words "sexually oriented business" throughout the entire ordinance.

3. Deleting the words "adult entertainment establishments" and substituting in lieu thereof the words "sexually oriented businesses" throughout the entire ordinance.

4. Deleting the word "adult" and substituting in lieu thereof the words "sexually oriented" wherever the word adult appears in the ordinance except; in Section 1(A) PURPOSE, the word "adults" after the words "or deny access by" and before the words "to sexually oriented materials protect" shall remain.

5. Deleting the word "an" and substituting in lieu thereof the word "a" before the words "sexually oriented business" wherever the word "an" precedes the words "sexually oriented business".

6. Amending the seventh whereas clause by deleting the word "entertainment" after the words "sexually oriented" and substituting in lieu thereof the word "business" and by changing the word "ordinance" to "ordinances" after the

words "sexually oriented business" and before "are unaffected by the following".

INTRODUCED BY:

/s/ [Illegible]
Member of Council

ADOPTED: AUGUST 7, 1997

SUBSTITUTE BILL NO. SO97-1022

A SECOND SUBSTITUTE ORDINANCE AMENDING CHAPTER 6.54 OF THE METROPOLITAN CODE OF LAWS RELATIVE TO LICENSING AND REGULATION OF ADULT ENTERTAINMENT.

NOW, THERFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

SECTION 1. Section 6.54.010 *Definitions,* is amended by adding the following definitions and re-lettering the definitions so that they are in alphabetical order:

"Crimes of a sexual nature" means the crimes of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or crimes committed in a jurisdiction other than Tennessee which, if committed in this state, would have constituted the crimes listed above. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements of the offense shall be used to determine what classification the offense is given.

"Current entertainer" means an entertainer performing sexually oriented entertainment within the metropolitan area as of March 1, 1998.

"Existing sexually oriented business," means a sexually oriented business that is operating within the metropolitan area as of March 1, 1998.

"New sexually oriented business" means a sexually oriented business not in operation as of March 1, 1998.

"New entertainer" means an entertainer not performing sexually oriented entertainment within the metropolitan area as of March 1, 1998.

SECTION 2. Section 6.54.020(G)(3) is amended by deleting the last sentence.

SECTION 3. Section 6.54.020(G)(6) is amended by deleting the subsection in its entirety and a new subsection (6) is enacted as follows:

(6) The board will arrange for a court reporter to be present at any hearing after an initial adverse administrative decision.

SECTION 4. Section 6.54.030 (A) is amended by deleting the subsection in its entirety and a new subsection (A) is enacted as follows:

(A) Except as provided in subsection F of this section, from and after March 1, 1998, no sexually oriented business shall be operated or maintained within the metropolitan area without first obtaining a license to operate issued by the board.

SECTION 5. Section 6.54.030(F)(1) and (2) is amended by deleting the subsections in their entirety and a new subsection (F) is enacted as follows:

(F) All existing sexually oriented businesses, as defined in 6.54.010, must submit an application for a license by June 30, 1998, or cease operations. All existing sexually oriented businesses which apply for a license by June 30, 1998, may continue to operate the sexually oriented business described in the application even if the board votes to deny the application where such denial is appealed to a court in accordance with 6.54.040(E)(3). All new sexually oriented businesses, as defined in 6.54.010, may submit an application at

any time but may not operate until a license is granted except as permitted in 6.54.040(E)(4).

SECTION 6. Section 6.54.040(A)(1) is amended by deleting the word "promptly" after "A copy of the application shall be distributed" and before the words "by the board" and substituting the words "the next business day".

SECTION 7. Section 6.54.040(A)(5)(d) is deleted in its entirety and the remaining subsections are re-lettered as appropriate.

SECTION 8. Newly re-lettered subsection 6.54 040(A)(5)(d) is amended by adding the word "/permit" after every appearance of the word "license".

SECTION 9. Newly re-lettered subsection 6.54.040(A)(5)(e) is amended by deleting the subsection in its entirety and a new subsection (e) is enacted as follows:

(e) All convictions or pleas of *nolo contendere* to a crime of a sexual nature, as defined in subsection 6.54.010, or any crime involving moral turpitude punishable as a misdemeanor violation that has occurred within the past two years. All convictions or pleas of *nolo contendere* to a crime of a sexual nature, as defined in Subsection 6.54.010, or any crime involving moral turpitude punishable as a felony that has occurred within the past five years.

SECTION 10. Subsection 6.54.040(B) is amended by adding the words "and Investigations" to the title of that subsection.

SECTION 11. Subsection 6.54.040(B)(1) is amended by deleting the words "police department" after the word "The" in the first sentence and before the words "Codes

department, fire department and health department" and by adding the following at the end of that subsection:

> The police department shall investigate the applicant's criminal history by entering the information included on the application into the appropriate computer database or otherwise obtaining the described information. The results of both the inspections and the investigation shall be filed in writing (this may be the printout given by a computer database) with the board no later than twenty days after the date the application was filed with the board. Any inspection or investigation information not filed with the board in the time period specified shall not prevent the applicant from receiving the license and shall be treated by the board as if the report revealed no code violations and/or no applicable criminal history.

SECTION 12. Subsection 6.54.040(B)(3) is amended by adding the words "and investigation" after the words "complete their respective inspections" and before the words "and shall communicate the results" and by deleting the word "thirty" in the first sentence and substituting the word "twenty".

SECTION 13. Subsection 6.54.040(C) is amended by adding the words "and Investigation" to the title of that subsection after the word "Inspection".

SECTION 14. Subsection 6.54.040(C)(1) is amended by deleting the subsection in its entirety and a new subsection (1) is enacted as follows:

> (1) Within fifteen days of receiving the results of the investigation conducted by the police department and the inspections by the codes department, fire department and health department the board will meet and

determine if the applicant is in compliance with the applicable statutes, ordinances and regulations. If the board determines that the applicant is in compliance with the applicable statutes, ordinances and regulations, including but not limited to the zoning code, and the applicant has not committed a crime of a sexual nature, as defined in 6.54.010, or any crimes involving moral turpitude, is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application then the board shall grant the license. If the board fails to meet within the time period specified, or fails to have a quorum at the meeting, then the license shall be deemed approved and notice sent to the applicant by United States Mail to the address listed on the application.

SECTION 15. Subsection 6.54.040(C)(2) is amended by deleting the subsection in its entirety and a new subsection (2) is enacted as follows:

(2) In the event the board denied the application in accordance with 6.54.050(B)(2), such denial and the reason for the denial shall be mailed to the applicant the next business day after the board meeting reviewing the results of the investigation and inspections.

SECTION 16. Subsection 6.54.040(C)(3) is amended by deleting the words "and the investigation information" after the words "using the application" and before the words "that the applicant has violated the provisions of" in the first sentence and substituting in lieu thereof the words "and the inspection reports".

SECTION 17. Subsection 654.040(C) is amended by adding a new subsection 4, renumbering the current subsection 4 as subsection 5 and, renumbering the remaining subsections as appropriate:

4. Any investigation reports or inspection reports not filed with the board in the time period specified in this subsection shall not prevent the applicant from receiving his/her license and shall be treated by the board as if that department approved the application.

SECTION 18. Newly re-numbered subsection 6.54.040(C)(5) is amended by deleting the words "until the applicant is in compliance" at the end of the last sentence and substituting in lieu thereof "in accordance with 6.54.050(A) and (B)".

SECTION 19. Newly re-numbered subsection 6.54.040(C)(6) is amended by adding the words "in accordance with 6.54.050(B)(3)" at the end of the last sentence.

SECTION 20. Newly re-numbered subsection 6.54.040(C)(7) is amended by deleting the subsection in its entirety and a new subsection (7) is enacted as follows:

(7) Within fifteen days of receiving the results of the investigation conducted by the police department, and inspection reports from the codes department, fire department and health department, if the board shall determine that the applicant is not in compliance with the applicable statutes, ordinances and regulations, the applicant shall be notified in writing, the next business day, that the license is denied for failing to comply with applicable statutes, ordinances and regulations. This notice shall specify the violation. If the applicant can come into compliance as described in 6.54.040(D), the denial shall not take effect. The notice shall also specify that the applicant may request a hearing within five days, cure the violation within fifteen days and request re-inspection or request an extension of time.

SECTION 21. Newly re-numbered subsection 6.54.040(C)(8) is amended by deleting the subsection in its entirety and a new subsection (8) is enacted as follows:

> (8) The board has the discretion to hold any application for further investigation if: (a) the initial investigation requires investigation into out-of-state records; or (b) verification of out-of-state employment relating to a sexually oriented business or a sexually oriented business license/permit or similar business license/permit is needed. Such additional investigation shall not exceed an additional ten days from the end of the initial fifteen days specified in subsection 6.54.040 (C)(1), unless otherwise agreed to by the applicant.

SECTION 22. Newly re-numbered subsection 6.54.040(C)(9) is amended by adding the words "the next business day" after the words "advise the applicant in writing".

SECTION 23. Newly re-numbered subsection 6.54.040(C)(10) is amended by deleting the words "subsection 654.040(C)(7) of this section" and substituting in lieu thereof "6.54.040(C)(8)" at the end of the last sentence.

SECTION 24. Newly re-numbered subsection 6.54.040(C)(11) is deleted in its entirety.

SECTION 25. Subsection 6.54.040(D)(1) is amended by deleting the words "subsection (C)(6)" in the first sentence and substituting in lieu thereof "6.54.040(C)(5) or (C)(7)"

SECTION 26. Subsection 6.54.040(D)(1)(a) is amended by deleting the subsection in its entirety and a new subsection (1)(a) is enacted as follows:

(a) The applicant has five days from the mailing of the denial described in 6 54.040(C)(5) or (C)(7) to cure the violation and notify the board or to request an extension pursuant to 6.54.040(D)(2). The applicant has the responsibility to contact the board.

SECTION 27. Subsection 6.54.040(D)(1)(b) is amended by deleting the subsection in its entirety and a new subsection (1)(b) is enacted as follows:

(b) Once contacted, the board shall notify the appropriate inspector the next business day that the applicant believes he/she has come into compliance.

SECTION 28. Subsection 6.54.404(D)(1)(c) is amended by deleting the word "ten." after the words "The inspector has" and before the words "days from the date" and substituting the word "five" and by adding the words "using the same language required in 6.54.040(B)(3)" at the end of the last sentence.

SECTION 29. Subsection 6.54.404(D)(1)(d) is amended by adding an additional sentence at the end of the paragraph:

The next meeting shall be held no later than fifteen days after the inspection report is filed with the board. Any inspections not filed with the board in the time period specified in this section will be treated as described in 6.54.040(C)(4).

SECTION 30. Subsection 6.54.404(D)(1)(e) is amended by deleting the word "owner" in the first sentence and substituting the word "applicant" and by deleting the words "subsection (C)(6) of this section" at the end of the last sentence and substituting the words "6.54.040(C)(5) or (C)(7)".

SECTION 31. Subsection 6.54.040(D)(2) is amended by deleting "(C)(6) and (D)(3) of this section" at the end of the last sentence and substituting the words "6.54.040(C)(5) or (C)(7) or (D)(3)".

SECTION 32. Subsection 6.54.404(D)(2)(a) is amended by deleting the subsection in its entirety and a new subsection (2)(a) is enacted as follows:

> (a) The request for an extension must be made in writing within five days from the denial described in 6.54.040(C)(5) or (C)(7).

SECTION 33. Subsection 6.54.404(D)(2)(b) is amended by adding an additional sentence at the end of the paragraph:

> The next meeting shall be held no later than fifteen days after the request for the extension is received by the board.

SECTION 34. Subsection 6.54.040(D)(2)(d) is amended by deleting the subsection in its entirety and a new subsection (2)(d) is enacted as follows:

> (d) An extension shall only be granted when the inspector from the Codes Department agrees that an extension is necessary and the Codes Inspector, the Health inspector, and the Fire Marshall agree that an extension will not endanger the health or safety of the community and the board decides that the applicant has demonstrated a good faith effort to make the necessary repairs or cure the violation(s) in a timely manner.

SECTION 35. Subsection 6.54.040(D)(3) is amended by deleting the subsection in its entirety and a new subsection (3) is enacted as follows:

(3) If the applicant fails to follow the procedure set out in 6.54.040(D) then the application is denied and the applicant must reapply to obtain a license. Following the procedure set out in subsections (D)(1) or (D)(2) of this section requires no additional fees. Once the deadlines to cure the violation or ask for an extension of time have passed, the denial described in 6.54.040(C)(5) and (C)(7) shall be treated as a denial of the application.

SECTION 36. Subsection 6.54.040(E)(1) is amended by deleting the subsection in its entirety and a new subsection (E)(1) is enacted as follows:

(1) When an application is denied, the applicant has the right to request a hearing within five days of the board's decision.

a. The request shall be in writing and filed with the board within five days of the board's decision.

b. The board shall hear all the evidence pertaining to the denial of the application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

c. At the hearing, the applicant may present evidence as to why his/her application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. This has no effect, whatsoever, on the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.

d. The board shall affirm or reject the denial of the application at the hearing and in writing stating the reasoning for the board's decision.

e. The denial of the application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

SECTION 37. Subsection 6.54.040(E)(2) is amended by deleting the subsection in its entirety and a new subsection (2) is enacted as follows:

(2) Any denial of an application for a license may be immediately appealed to the circuit or chancery courts of Davidson County. The metropolitan department of law may institute proceedings for a declaratory judgment. If the applicant chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with a petition for a writ of certiorari.

SECTION 38. Subsection 6.54.040(E) is amended by adding a new subsection numbered (3) as follows:

(3) For an existing sexually oriented business, as defined in 6.54.010, any adverse administrative decision that is appealed to any court shall not take effect until that decision has been upheld by the court after adjudication on the merits. If the court fails to rule within forty (40) days of the filing of an appeal, a license shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the license then that license shall be revoked in accordance with 6.54.150(A)(10). Adverse administrative decisions of the board, which are not appealed shall not take effect for sixty (60) days from the date of the decision to allow the affected party time to seek judicial review.

SECTION 39. Subsection 6.54.040(E) is amended by adding a new subsection numbered (4) as follows:

> (4) For a new sexually oriented business, as defined in 6.54.010, any adverse administrative decision shall take effect the day the decision is issued by the board If the adverse administrative decision is appealed to a court, and if the court fails to rule within forty (40) days of the filing of an appeal, a license shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the license then that license shall be revoked in accordance with 6.54.150(A)(10).

SECTION 40. Subsection 6.54.050(B)(2) and (B)(2)(a) are amended by deleting the subsections in their entirety and a new subsection (2) and (2)(a) is enacted as follows:

> (2) No individual applicant, no officer, director or stockholder required to be named under Section 6.54.040(A)(5)(i) and no partners required to be named under Section 6.54.040(A)(5)(j) convicted of a crime of a sexual nature, as defined in 6.54.010, or any crime involving moral turpitude in any jurisdiction shall be eligible to receive a license for the time period described below.
>
> > (a) If the conviction was for a misdemeanor violation, then the applicant shall be ineligible to receive a permit for two years from the date of the conviction.

SECTION 41. Subsection 6.54.050(B)(2)(b) and 6.54.050(B)(2)(c) is amended by deleting everything after the words "the date of the conviction".

SECTION 42. Subsection 6.54.050(B)(3)(a) is amended by deleting the subsection in its entirety and a new subsection (3)(a) is enacted as follows:

> (a) If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a license for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or to a crime of a sexual nature, as defined in 6.54.010, or any crime involving moral turpitude.

SECTION 43. Subsection 6.54.050(B)(3)(c) is amended by deleting the subsection in its entirety and a new subsection (3)(c) is enacted as follows:

> (c) If the misleading statements or omissions referred to a crime of a sexual nature, as defined in 6.54.010, or any crime involving moral turpitude, then the applicant shall not be eligible to receive a license until the time period described in 6.54.050(B)(2)(a) through (c) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is longer.

SECTION 44. Subsection 6.54.050(B)(4) is amended by deleting the words "this chapter or violated" after the words "found to have previously violated" and before the words "the metropolitan zoning code applicable to sexually oriented businesses".

SECTION 45. Subsection 6.54.050(B) is amended by adding a new subsection (5) to read as follows:

> 5. If the applicant plans to have or has booths, cubicles or stalls for the purpose of viewing sexually oriented

motion pictures, sexually oriented movies, sexually oriented films, sexually oriented videos or sexually oriented live entertainment, then the booths, cubicles, or stalls must comply with the requirements set out in 6.54.050(A).

SECTION 46. Subsection 6.54.060(A) is amended by deleting the subsection in its entirety and a new subsection (A) is enacted as follows:

(A) Except as provided in subsection (B) of this section, from and after March 1, 1998, no person shall be an entertainer in a sexually oriented business within the metropolitan area without first obtaining a permit issued by the board.

SECTION 47. Subsection 6.54.060(B) is amended by deleting the subsection in its entirety and a new subsection (B) is enacted as follows:

(B) All current entertainers, as defined in Section 6.54.010. wishing to continue to perform sexually oriented entertainment must submit an application for a permit by April 15, 1998. All current entertainers, who apply for a permit by April 15, 1998, may continue to perform sexually oriented entertainment even if the board votes to deny the application where such denial is appealed to a court in accordance with 6.54.070(D)(3). All new entertainers, as defined in Section 6.54.010, may submit an application at any time but may not perform sexually oriented entertainment until a permit is granted except as permitted in 6.54.070(D)(4).

SECTION 48. Subsection 6.54.070(A)(1) is amended by deleting the subsection in its entirety and a new subsection (1) is enacted as follows:

(1) Any person desiring to secure a permit shall make application to the board. The applicant shall file

the original application with three copies. The original application shall be dated by the board and held in the files of the board. A copy of the application shall be distributed the next business day by the board to the Metropolitan Nashville Police Department and the applicant.

SECTION 49. Subsection 6.54.070(A)(2) is renumbered as 6.54.070(A)(4) and new subsections (2) and (3) are added as follows:

(2) Application forms shall be available at the office of the board.

(3) The application form shall include all information indicated in subdivisions (4)(a) through (4)(h) of this subsection.

SECTION 50. Re-numbered subsection 6.54.070(A)(4) shall read "4. The applicant shall furnish the following information under oath:".

SECTION 51. Subsection 6.54.070(A)(4)(b) is amended by deleting the word "Written" at the beginning of that subsection.

SECTION 52. Subsection 6.54.070(A)(4) is amended by deleting subsection (e) in its entirety.

SECTION 53. Subsection 6.54.070(A)(2) is amended by re-lettering subsection (f) as (e) and substituting the following new subsection (e):

(e) Whether the applicant previously operated in this or any other county, city or state under a sexually oriented business license/permit or similar business license/permit. For whom the applicant was employed or associated at the time. Whether the applicant has ever had such a license/permit revoked or suspended

the reason therefor and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation;

SECTION 54. Newly re-numbered subsection 6.54.070(A)(4) is amended by re-lettering subsection (g) as (f) and re-lettering the remaining subsections as appropriate and by substituting the following new subsection (f):

(f) All convictions or pleas of *nolo contendere* to a crime of a sexual nature, as defined in Section 6.54.010, or any crime involving moral turpitude punishable as a misdemeanor violation that has occurred within the past two years All convictions or pleas of *nolo contendere* to a crime of a sexual nature, as defined in Section 6.54.010, or any crime involving moral turpitude punishable as a felony that has occurred within the past five years.

SECTION 55. Newly re-numbered subsection 6.54 070(B) is amended by deleting subsection (B) in its entirety and substituting the following new subsection (B):

(B) The police department shall investigate the applicant's criminal history by entering the information included on the application into the appropriate computer database or otherwise obtaining the described information. The results of the investigation shall be filed in writing (this may be a printout given by a computer database) with the board no later than twenty days after the date the application was filed with the board. Any investigation information not filed with the board in the time period specified shall not prevent the applicant from receiving his/her permit and shall be treated by the board as if the report revealed no applicable criminal history.

SECTION 56. Newly re-lettered subsection 6.54.070(C) is amended by deleting it in its entirety and substituting the following new subsection (C):

(C) Board Action on the Investigation Results.

1. Within fifteen days of receiving the results of the investigation conducted by the police department the board will meet and determine if the applicant has not committed a crime of a sexual nature, as defined in 6.54.010, or any crime involving moral turpitude, is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application then the board shall grant the permit. If the board fails to meet within the time period specified, or fails to have a quorum at the meeting, then the permit shall be deemed approved and sent to the applicant by United States Mail to the address listed on the application.

2. In the event the board denied the application in accordance with 6.54.080, such denial and the reason for the denial shall be mailed to the applicant the next business day after the board meeting reviewing the results of the investigation.

3. Any investigation reports not filed with the board in the time period specified in this section shall not prevent the applicant from receiving his/her permit and shall be treated by the board as if that department approved the application.

4. If in the course of the investigation it is discovered any false or misleading statements or information was given on the application, or material facts were omitted from the application, the board shall deny the application in accordance with 6.54.080.

5. The board has the discretion to hold any application for further investigation if: (a) the initial investigation requires investigation into out-of-state records; or (b) verification of out-of-state employment relating to a sexually oriented business or a sexually oriented business license/permit or similar business license/permit is needed. Such additional investigation shall not exceed an additional ten days from the end of the initial fifteen days specified in section 6.54.070(D)(1), unless otherwise agreed to by the applicant.

6. Whenever an application is denied or held for further investigation, the board shall advise the applicant in writing the next business day of the reasons for such action. Upon conclusion of the additional investigation, the board shall advise the applicant in writing the next business day whether the application is granted or denied.

7 Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding such application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he/she is ineligible for such permit and shall be grounds for denial thereof by the board. This in no way requires the applicant to agree to additional time extensions beyond that allowed in 6.54.070(C)(5).

Subsection 6.54.070(C) is further amended by deleting subsection (8) and (9).

SECTION 57. Subsection 6.54.070 is amended by deleting re-numbered subsection (D) and substituting a new subsection "D" entitled "Denial of the Permit Application".

SECTION 58. Newly re-numbered subsection 6.54 070(D)(1) is amended by deleting it in its entirety and substituting the following new subsection (D)(1):

(1) When an application is denied, the applicant has the tight to request a hearing within five days of the board's decision.

a. The request shall be in writing and filed with the board within five days of the board's decision.

b. The board shall hear all the evidence pertaining to the denial of the application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

c. At the hearing, the applicant may present evidence as to why his/her application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. This has no effect, whatsoever, on the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.

d. The board shall affirm or reject the denial of the application at the hearing and in writing stating the reasoning for the board's decision.

e. The denial of the application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

SECTION 59. Newly re-numbered subsection 6.54.070(D)(2) shall read as follows:

(2) Any denial of the application for a permit may be immediately appealed to the circuit or chancery courts of Davidson County. The metropolitan department of

law may also initiate proceedings for a declaratory judgment. If the applicant chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with a petition for a writ of certiorari.

SECTION 60. Newly re-numbered subsection 6.54.070(D)(3) shall read as follows:

(3) For any current entertainer, as defined in 6.54.010, any adverse administrative decision that is appealed to any court shall not take effect until that decision has been upheld by the court after adjudication on the merits. If the court fails to rule within forty (40) days of the filing of an appeal, a permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the permit then that permit shall be revoked in accordance with 6.54 150(A)(10). Adverse decisions of the board, which are not appealed shall not take effect for sixty (60) days from the date of the decision to allow the affected party time to seek judicial review

SECTION 61. Newly re-numbered subsection 6.54.070(D)(4) shall read as follows:

(4) For a new entertainer, as defined in 6.54.010, any adverse administrative decision shall take effect the day the decision is issued by the board. If the adverse administrative decision is appealed to a court, and if the court fails to rule within forty (40) days of the filing of an appeal, a permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the permit then that permit shall be revoked in accordance with 6.54.150(A)(10).

SECTION 62. Subsection 6.54.070(E)(2) is amended by deleting the words "adult entertainment" and substituting the words "sexually oriented"

SECTION 63. A new section is created numbered 6.54.080 and entitled "Standards for Issuance of a Permit" and all following sections are re-numbered accordingly. The new section will read as follows:

6.54.080 Standards for Issuance of a Permit.

A. Applicant. To receive a permit as an entertainer, an applicant must meet the following standards:

1. The applicant shall be at least eighteen years of age.

2. No applicant convicted of a crime of a sexual nature, as defined in 6 54.010, or any crime involving moral turpitude in any jurisdiction shall be eligible to receive a permit for the time period described below.

    a. If the conviction was for a misdemeanor violation, then the applicant shall be ineligible to receive a permit for two years from the date of the conviction.

    b. If the conviction or plea was for a felony violation, then the applicant shall be ineligible to receive a permit for five years from the date of the conviction.

    c. The time is computed from the date of the application to the date of the conviction.

3. The applicant shall not have given any false or misleading information on the application, or omitted any material facts from the application.

a. If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a permit for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or to a crime of a sexual nature, as defined in 6.54.010, or any crime involving moral turpitude.

b. If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a permit until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is longer.

c. If the misleading statements or omissions referred to a crime of a sexual nature. as defined in 6.54.010, or any crime involving moral turpitude, then the applicant shall not be eligible to receive a permit until the time period described in 6.54.080(A)(2)(a) through (c) of this section has expired or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is longer.

SECTION 64. Newly re-numbered subsection 6.54.110(A) is amended by deleting the words "is allowed in" after the words "renewed before operation" and before the words "the following year".

SECTION 65. Newly re-numbered subsection 6.54.110(B) is amended by deleting the words "six copies"

and substituting the words "plus the number of copies listed in subsection 6.54.040(A) or 6.54.070(A)".

SECTION 66. Newly re-numbered subsection 6.54.110(K) is amended by deleting the following words "included in Sections- 6.54.040, 6.54.050, 6.54.070 and 6.54.140 (causes for revoking a license/permit)" at the end of the first sentence.

SECTION 67. Newly re-numbered subsection 6.54.110(L)(1) and (2) are amended by deleting these subsections in their entirety and substituting in a new (L) as follows:

> L. When an application for renewal is denied, the applicant has the right to request a hearing within five days of the board's decision.
>
> 1. The request shall be in writing and filed with the board within five days of the board's decision.
>
> 2. The board shall hear all the evidence pertaining to the denial of the renewal application at the next regular meeting. The next meeting shalt be held no later than fifteen days after the request described above is mailed.
>
> 3. At the hearing, the applicant may present evidence as to why his/her renewal application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. This has no effect, whatsoever, on the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.
>
> 4. The board shall affirm or reject the denial of the renewal application at the hearing and in writing stating the reasoning for the board's decision.

5. The denial of the renewal application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

6. Any adverse administrative decision regarding the renewal of a license/permit that is appealed to any court shall not take effect until that administrative decision has been upheld by the court after adjudication on the merits. If a court fails to rule within forty (40) days of the filing of an appeal, a new license/permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the renewal for a license/permit then that license/permit shall be revoked in accordance with 6.54.150(A)(10). Adverse decisions of the board which are not appealed shall not take effect for sixty (60) days from the date of the decision to allow the affected party time to seek judicial review.

SECTION 68. Newly re-numbered subsection 6.54.110(M) is amended by deleting the subsection in its entirety and substituting the following new subsection (M):

(M) The denial of any renewal for a license/permit may be appealed to the circuit or chancery courts of Davidson County by the applicant. The metropolitan department of law may initiate proceedings for a declaratory judgment in the circuit or chancery court for Davidson County. If the applicant or the permittee/licensee chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with the petition for a writ of certiorari.

SECTION 69. Newly re-numbered subsection 6.54.130(A) is amended by deleting "6.54.140(B)" at the end the of paragraph and substituting in lieu thereof the letter "6.54.150(C)".

SECTION 70. Newly re-numbered subsection 6.54.130(C) is amended by deleting the word "deemed" in the last sentence and substituting in lieu thereof the word "defined".

SECTION 71. Newly re-numbered subsection 6.54.130(G) is deleted in its entirety and the remaining sections re-lettered consecutively.

SECTION 72 Newly re-numbered subsection 6.54.130(G) is amended to read as follows:

> G. A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:
>
> *This Sexually Oriented Business is regulated by The Metropolitan Code of Nashville and Davidson County. Chapter 654 which provides that no entertainer or customer shall be permitted to have any physical contact with any entertainer on the premises during any performance. All performances shall only occur upon a stage at least eighteen inches above the immediate floor level at least three feet from the nearest customer.*

SECTION 73. Newly re-numbered subsection 6.54.130(I) is amended by deleting the words "all entertainers" in the first line and by adding the words "in booths, stalls, or cubicles" after the words "to ensure that the illumination" and before the words "described to Section" and by deleting the letter "(r)" and substituting in lieu thereof the roman numeral "(iv)".

SECTION 74. Newly re-numbered subsection 6.54.150(A)(8) through (10) are amended by deleting the subsections in their entirety and substituting the following new subsections (8)-(10):

8. Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition by maintaining or allowing continuing violations of the metropolitan code or the rules and regulations of the following departments: health, codes, fire, zoning or any violations of this chapter which result in a threat to the health or safety of the community.

9. The attempted transfer of a license/permit or any interest in a license/permit shall automatically and immediately revoke the license.

10. If an application for a license/permit or a renewal of a license/permit was denied and that administrative denial was appealed and upheld by a court after adjudication on the merits then that license/permit shall be revoked on the effective date of the court's judgement.

SECTION 75. Newly re-numbered subsection 6.54.150 is amended by adding a new subsection (B) as follows and renumbering the remaining subsections consecutively.

B. The board shall suspend a license or permit for any of the following reasons:

1. A first time offense, which poses a threat to the health or safety of the community. For any violation which is a threat to the health and safety of the community and is also a first time offense, the suspension shall not be longer than seven (7) days.

2. A violation of this chapter or the metropolitan code which is not a threat to the health and safety of the community and has occurred more than three times over a period of two years.

3. No suspension shall be for less than one full twenty-four hour period for any violation.

SECTION 76. Newly re-numbered subsection 6.54.150(D) is amended by deleting the subsection in its entirety and substituting the following new subsection (D):

(D) Other violations not listed in 6.54.150(A) of this chapter may be subject to a fine in an amount not to exceed five hundred dollars ($500.00) for each violation.

SECTION 77. Newly re-numbered subsection 6.54.150(E)(1) is amended by deleting the words "at least ten" and substituting in lieu thereof the word "five" and by deleting the word "charges" and substituting in lieu thereof the words "alleged violation(s)" and by deleting the words "subsection (A)(10)" and substituting in lieu thereof the words "6.54.150 (A)(9) and (10)" at the end of that paragraph.

SECTION 78. Newly re-numbered subsection 6.54.150(E)(2) is amended by deleting the subsection in its entirety and substituting the following new subsection (2):

(2) The board shall hear all the evidence pertaining to the revocation or suspension at the next regular meeting. The next meeting shall be held no later than fifteen days after the notice described above is mailed. The licensee/permittee may present evidence bearing upon the question of suspension/revocation.

SECTION 79. Subsection 6.54.150(E)(3) is deleted in its entirety and the remaining subsections renumbered consecutively.

SECTION 80. Newly re-numbered subsection 6.54.150(E)(3) is amended deleting the subsection in its entirety and substituting the following new subsection (3):

> (3) If the licensee/permittee fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board on the citation. This has no effect, whatsoever, on the licensee's/ permittee's right to appeal any revocation to the chancery court of Davidson County.

SECTION 81. Newly re-numbered subsection 6.54.150(E)(4) is amended by deleting the last sentence.

SECTION 82. Newly re-numbered subsection 6.54.150(E)(5) is amended by deleting the subsection in its entirety and substituting the following new subsection (5):

> (5) Any adverse administrative decision to suspend or revoke a license/permit that is appealed to the circuit or chancery courts of Davidson County shall not take effect until that administrative decision has been upheld by the court after adjudication on the merits. Adverse decisions of the board which are not appealed shall not take effect for sixty (60) days from the date of the decision to allow the affected party time to seek judicial review.

SECTION 83. Newly re-numbered subsection 6.54.150(E) is amended by adding a new subsection (6) to read as follows:

> (6) The revocation/suspension of a license/permit may be appealed to the circuit or chancery courts of

Davidson County by the licensee/permittee. The metropolitan department of law may initiate proceedings for a declaratory judgment in the circuit or chancery court for Davidson County. If the permittee/licensee chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with the petition for a writ of certiorari.

SECTION 84. Wherever the words "chancery court" appears substitute the words "circuit or chancery courts".

SECTION 85. This Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO
LEGALITY OF FORM
AND COMPOSITION:

/s/ [Illegible]
Metropolitan Attorney

RECOMMENDED BY:

_____

/s/ [Illegible]

_____
Members of Council

No. 05-1194

(2)

Supreme Court, U.S.
FILED
MAY 19 2006
OFFICE OF THE CLERK

In The
Supreme Court of the United States

METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,

Petitioner,

v.

DEJA VU OF NASHVILLE, INC., et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI VOLUME II, PAGES 119 TO 325

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DUPLICATE

METROPOLITAN COUNTY COUNCIL

SUBSTITUTE Bill No. O99-1503

An ordinance to amend Title 6, Chapter 6.54 of the Metropolitan Code of Laws concerning sexually oriented businesses.

Introduced _____

Passed first Reading _____

Referred to _____

~~Amended~~ SUBSTITUTE BILL FILED FEB 2 1999

Passed second Reading FEB 2 1999

Referred to CODES, PUBLIC SAFETY, and HEALTH, HOSPITALS & SOCIAL SERVICES COMMITTEES

AMENDED & Passed third Reading FEB 16 1999

Approved FEB 17 1999

By [Illegible]
Metropolitan Mayor

Departments Notified FEB 17 1999

Advertised _____

Substitute Bill No. O99-1503

An ordinance to amend Title 6, Chapter 6.54 of the Metropolitan Code of Laws concerning sexually oriented businesses.

Whereas, various changes need to be made to Chapter 6.54 to make the ordinance's subsections consistent with one another.

Now therefore, be it enacted by the Metropolitan Council of Nashville and Davidson County as follows:

Section 1. Sections 6.54.010(D), (G), (L), (M), 6.54.030(A), 6.54.060(A) of the Metropolitan Code of Nashville and Davidson County ("MCL") are amended by deleting the date, "March 1, 1998" and substituting in lieu thereof the date "March 1, 1999"

Section 2. Section 6.54.010(W) of the MCL is amended by deleting the definition of "Sexually oriented" in its entirety and substituting the following in lieu therefore:

> W. "Sexually oriented" means any exhibition of any motion pictures, films, videos or live performance, display or dance of any type, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers which has a significant or substantial portion of such performance or service any actual or simulated performance depicting "specified sexual activities" or exhibition and viewing of "specified anatomical areas."

Section 3. Section 6.54.010(X) of the MCL is amended by deleting the definition of "Sexually oriented

business/establishment" in its entirety and substituting the following in lieu therefore:

> "Sexually oriented business/establishment" means any commercial establishment which for a fee or incidentally to another service, regularly presents material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein. "Sexually oriented business/establishment" also means any commercial establishment to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, separate from the common areas of the premises for the purpose of viewing sexually oriented motion pictures, sexually oriented movies, sexually oriented films, sexually oriented videos.

Section 4. Section 6.54.030(E) is amended by adding the word "knowingly" after the words "It is unlawful for any entertainer or operator to" and before the words "work in or about," and after the words "work in or about, or to" and before the words "perform any service directly related to the operation of any unlicensed sexually oriented business."

Section 5. Section 6.54.030(F) is amended by deleting the date "June 30, 1998" where it appears and substituting in lieu therefore "March 15, 1999".

Section 6. Section 6.54.040(A)(1) of the MCL is amended by deleting the words "the fire department" after the words "the police department, the department of codes administration, the health department" and before the words "and the applicant." at the end of the paragraph.

Section 7. Section 6.54.040(A)(4) of the MCL is amended by deleting the words "obtain a license" and substituting in lieu therefore "be listed in the license application for any sexually oriented business" after the words "The following persons" and before the words "any partner of a partnership" in the first sentence of that subsection.

Section 8. Section 6.54.040(A)(5)(a) of the MCL is amended by adding the words "of the applicant" after the words "Name and address" and before the words "including all aliases".

Section 9. Section 6.54.040(A)(4)(b) of the MCL is amended by deleting that subsection in its entirety and substituting in lieu thereof:

> Proof of the applicant's date of birth demonstrating that the applicant is at least eighteen years of age.

Section 10. Section 6.54.040(A)(5)(c) of the MCL is amended by adding the words "regarding crimes of a sexual nature" in the parentheses after the words "investigation into the applicant's criminal background" and before the semicolon.

Section 11. Section 6.54.040(A)(5)(d) of the MCL is amended by adding the words "within the last two years from the date of application," after the words "Whether the applicant has ever had such a license/permit revoked or suspended," and before the words "the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;"

Section 12. Section 6.54.040(A)(5)(e) of the MCL is amended by deleting it in its entirety and substituting the following in lieu therefore:

> e. All convictions to a crime of a sexual nature, as defined in subsection 6.54.010, punishable as a misdemeanor violation that has occurred within the past two years. All convictions to a crime of a sexual nature, as defined in Subsection 6.54.010, punishable as a felony that has occurred within the past five years.

Section 13. Section 6.54.040(A)(5)(f) of the MCL of the MCL is amended by deleting it in its entirety and substituting the following in lieu therefore:

> f. All judgements by a court within the past two years for violations of the metropolitan zoning Section 17.64.260;

Section 14. Section 6.54.040(A)(5)(g) of the MCL is amended by deleting the word "portrait" after the words "Fingerprints and two" and before the words "photographs at least two inches by two inches" and by adding the words "regarding crimes of a sexual nature" in the parentheses after the words "investigation into the applicant's criminal background" and before the semicolon.

Section 15. Section 6.54.040(A)(6) of the MCL is amended by deleting this section in its entirety and substituting the following in lieu therefore:

> if the applicant intends to have booths, , or sexually oriented videos, then in addition, the applicant shall provide the board, with his/her application, a diagram, drawn to scale, of the premises including the location and layout of all booths and the location of the clerk/manager's

stand or counter. Though the diagram shall be drawn to scale, it does not have to be professionally prepared.

Section 16. Section 6.54.040(B)(1) of the MCL is amended by deleting it in its entirety and substituting the following in lieu therefore:

B. Inspections & Investigations.

1. The codes department shall, upon receipt of a copy of the application, inspect the premises to insure that the establishment complies with the unique physical layout requirements set out in Section 6.54.050(A)(1) of this ordinance. The health department shall inspect the premises to insure compliance with applicable heath code statutes, ordinances, and regulations. The police department shall investigate the applicant's criminal history by collecting the applicants fingerprints and 2X2 photo either by performing these functions or by reviewing these items which were provided by the applicant and by performing a background investigation for crimes of a sexual nature. The results of both the inspections and the investigation shall he filed in writing with the board no later than twenty days after the date the application was filed with the board. Any inspection or investigation information not filed with the board in the time period specified shaft not prevent the applicant from receiving the license and shall he treated by the board as if the report revealed no sexually oriented business/adult entertainment zoning code violations and/or no applicable criminal history. Subject to 6.54.150.

Section 17. Section 6.54.040(B)(2) of the MCL is amended by deleting the words "stalls, cubicles or rooms"